Family Reunification
A barrier or facilitator of integration?

Country report of The Netherlands

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Authors: Betty de Hart, Tineke Strik & Henrike Pankratz
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This research was coordinated by the Immigrant Council of Ireland, Dublin, Ireland. The Dutch report was compiled by the Centre for Migration Law, Radboud University Nijmegen, The Netherlands.

Lay-out by Hannie van de Put

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European Commission
DG HOME AFFAIRS - Unit B1: Immigration and Integration
Rue du Luxembourg 46 - LX46 02/178 - B-1049 Brussels/Belgium
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Chapter 1
Introduction

1.1 Introduction

This report presents the outcome of a study on the impact of family reunification policies in the Netherlands, specifically on the ability of third country national migrants to live with their family members in the Netherlands and to integrate into Dutch society. The study is part of a European project entitled ‘Family Reunification – a barrier or facilitator of integration?’ which compares legislation and policies with regard to family reunification and their effects in six EU Member States. The participating countries are Austria, Germany, Ireland, The Netherlands, Portugal and the United Kingdom.

The rationale for this project came from the recognition of a growing trend by national governments to amend family reunification policies and legislation without thorough debate or research into the potential effects of such changes. This project seeks to offer an opportunity for all relevant actors to learn from and reflect on the tangible consequences of more stringent conditions on family reunification of third country nationals with their family members residing in the Member States. At the same time, EU instruments on family reunification for Union citizens and third country nationals are based on the recognition that family reunification should be promoted, as it is beneficial to the integration of residents of the EU. For these reasons, the national research teams focused on the question of whether the current family reunification rules hinder or facilitate smooth reunification and what impact the rules have on the integration of both the sponsor and the admitted family members.

1.2 Selection

This study considers three separate categories of third country national family migrants, each distinguished by the status of the sponsor: family migrants sponsored by: (i) third country nationals; (ii) Union citizens; and (iii) Dutch nationals who do or do not use the EU rules on free movement.

There are three categories of sponsors with different rights: Union citizens enjoy the strongest right to family reunification, derived from the Union Citizens Directive; third country nationals rely on the Family Reunification Directive and, therefore, on all principles of Union law, whereas Dutch nationals are only able to invoke national legislation. In all cases, Article 8 of the European Convention on Human Rights (ECHR) protects family life to a certain extent.

Amongst third country nationals, four groups have been distinguished. Aside from the large group of regular TCNs, two groups are specifically highlighted as they enjoy more privileged rights: Turkish nationals (relying on the Association Agreement
EC/Turkey) and highly skilled workers. The Dutch policy towards the latter group was already more generous at the moment of adoption of the Blue Card Directive, which includes favourable provisions for family reunification. Refugees and their families are granted a stronger right to reunification by the Family Reunification Directive and the Refugee Convention.

The assessment of the rules on these heterogeneous groups and their actual family reunification, can contribute to an understanding of the impact of the (different) rules on family life and integration of sponsors and their family members.

Selection of themes
Given the wide range of differing requirements for family reunification across the countries participating in this study, the project partners decided to focus on, and thus limit the comparison to, four main types of requirements, namely the requirements on income, the pre-entry test, the age-limit and the housing criterion. Similarly, given the difficulties in finding a uniform definition of ‘integration’, on the one hand, and the need to draw comparisons across countries on the other, the study focuses on four areas identified as essential to integration by the European Commission. These include: employment, education, social inclusion and language skills. In addition, consideration was given to the impact of family reunification policies on family reunification itself: whether or not the rules promote or hinder the reunification of family members.

1.3 Terminology

The term ‘family reunification’ is to be understood in a broad sense. It covers situations in which a family unit of third country nationals is established abroad at a time when the sponsor has already acquired legal residence in the Member State (family formation), as well as situations whereby the family relationship pre-existed in the country of origin (family reunification). Furthermore, the extent to which a family unit established in one of the Member States is protected from the expulsion of one or more of the family members (family retention) is also explored. The persons who are regarded as family members in the participating Member States are further defined in chapter 2.

The term ‘sponsor’ in this report refers to a resident in one of the Member States who wishes to live with his or her third country national family member(s) in that Member State. The sponsor can be a third country national, a Union citizen who has exercised his or her right to free movement, or a Dutch national who has not exercised his or her right to free movement. References to Dutch nationals who are able to invoke the Union Citizens Directive because of (previous) exercise of the right to free movement are explicitly highlighted. The term ‘third country nationals’ applies to nationals from a country not belonging to the EU or EEA. For practical reasons, this term is, consequently, abbreviated to TCNs. As already mentioned above, the differ-
ent treatment of certain categories of TCNs who enjoy a privileged status e.g. Turkish nationals and highly skilled workers is briefly highlighted also. Finally, refugees and beneficiaries of subsidiary protection are dealt with separately in this report.

1.4 Research methodology

This study adopted a mixed method approach. Data was drawn from four main sources. Firstly, desk research included a review of existing literature (studies that have evaluated the requirements for family migration on integration and/or its effects), national and European case law, parliamentary documents and commentaries on national legislation (e.g. from NGOs, national advisory committees or international monitoring committees). Secondly, quantitative data was analysed, with particular attention paid to official immigration statistics and integration test pass rates. Thirdly, primary qualitative research was based on interviews with: (i) individuals who are subject to family reunification legislation and policies, (ii) lawyers and representatives of NGOs who work with these individuals; and (iii) policy makers who are responsible for developing/implementing family reunification policies.

The qualitative research was conducted using focus groups and individual interviews. Semi-structured discussion guides, developed jointly by project partners, were used to ensure consistency between interviews and across countries participating in the research. Individuals were asked about their motivations for applying for family reunification, views on the substantive criteria to be fulfilled and the application process, as well as the impact of the requirements and application process on their family and on their integration process. NGO participants were asked to detail their views on the link between family reunification and integration, the rationale for, and impact of, requirements for family reunification and the factors that they considered to be important to integration. Policy makers were asked about the reasoning behind family reunification policies, the evidence on which they were based and proof of their effectiveness in terms of their initial aims.

Sample and recruitment for qualitative research:

(a) Individuals

The sample was designed to offer insight into as broad a range of experiences as possible, rather than to be representative of the population of family migrants and sponsors in the Netherlands. On this basis, project partners agreed that individuals should be drawn from all three categories of third country nationals (TCNs), and that a mixture of sponsors and applicants and different family member types (e.g. spouse, parent, child) should be recruited. The Centre for Migration Law (CMR) aimed to recruit individuals from a range of nationalities and to talk to families with a range of sponsor types. Due to problems in recruiting individuals for the focus group, the CMR conducted additional individual interviews. Fifteen interviews were conducted individually and one focus group (FG) with two Moroccan and two refugee women from Burundi and the Congo was organized. A total of 19 interviews were conducted.
(b) Lawyers and NGO representatives
The CMR managed to speak to three NGO representatives with experience of working with individuals from the main groups affected by the family reunification rules: a refugee organization, an organization advocating for the rights of Turkish nationals (one of the largest migrant communities residing in the Netherlands), and one organization supporting all immigrants with issues regarding their residence rights.

(c) Policy makers
At governmental level, two officials who worked at the Ministry of Interior and Kingdom Relations for the Minister for Immigration, Integration and Asylum were interviewed. They both worked in the General Migration Directorate: one specialized in family reunification, and the other had worked more generally in the field of migration for approximately 20 years.

Recruitment
Participants were recruited through a mixture of direct invitations, adverts and ‘snowball sampling’. Subject to screening, participants self-selected for participation in the research. Both snowball sampling and self-selection carry a risk of sample bias: individuals identified through snowball sampling are limited to those in referrers’ networks. Self-selection carries a risk that only those who better speak Dutch, are better educated, more interested in the topic, or better integrated into society will participate. Screening, wide distribution of invitations to participate, and avoiding reliance on any one ‘snowballing’ network were used to mitigate these risks. The Centre for Migration Law disseminated information regarding the research by advertising online and sending letters and e-mails to national and regional NGOs, legal practitioners and policy makers and invited them to self-select into the research and/or inform their own personal contacts, service users and clients of the project and to refer any interested participants to the Centre for Migration Law to be interviewed. Four of the individual participants were approached directly and the remaining 15 individual participants were sourced via organisations such as ‘Stichting Buitenlandse Partner’, ‘Mudawannah’ and via snowball sampling. Lawyers were searched for via networks. When selecting, we took into account different factors like the geographical location and the size of the office, in order to speak with lawyers from diverse backgrounds.

Interviews

1 The snowball technique relies on referrals from initial contacts (‘gate-keepers’) to supply additional contacts for participation in research.
2 Through the online discussion platform of ‘Stichting Buitenlandse Partner’, www.buitenlandsepartner.nl.
All interviews were conducted in the Dutch language. Two interviews were conducted via Skype, the other ones were face-to-face interviews. Each interview lasted between one and one and a half hours and the focus group with four individual participants lasted two hours. Interviews and focus groups were recorded where possible or if not possible, detailed notes were taken. The individuals participating consented to the use of the information from the interviews in the report but it was agreed that any quotes used would be anonymous. To ensure informed consent, participants were given an information sheet with details of the research, data protection and confidentiality. All data from interviews and focus groups was anonymised and securely stored. At their request, the recordings of the interviews with the officials were destroyed after they had been transcribed. All NGOs and lawyers consented to being identified as participants in the research and allowed the use of quotes which referred to their full name.

1.5 Content

The Dutch report contains a total of eight chapters. Chapter 2 assesses the requirements for family reunification and compares these requirements between the different groups. The same exercise was undertaken with regard to the rights and obligations of the family members after admission to the Netherlands.

Chapter 3 investigates the development of Dutch policy over the last ten years and the political debates surrounding its amendments. The positions which were taken by the subsequent governments, the justification for changes and the impact of evaluations and statistics on these positions were explored. Chapter 4 looks at the extent to which family members are able to invoke the rights outlined in chapter 2 by scrutinising the application of these requirements in practice. It deals with the organization and duration of the procedure, the level of discretion exercised by immigration authorities, the right to appeal and legal aid and the verification of marriages (where applicable) within the framework of combating fraudulent marriages. Chapter 5 offers an overview of the case law on both the Dutch and the European level, focusing on the four main requirements. The dynamics between national and European case law is also detailed, as well as the impact of European case law on family reunification in terms of the rules, and on family reunification policies.

Chapter 6 answers the research questions on the basis of both quantitative and qualitative data. It evaluates to what extent the development of requirements for family reunification has impacted on the numbers availing themselves of family reunification, but also to what extent the requirements have impacted on the sponsor and the family members in question. It is explored whether they experienced problems in meeting the requirements. The question is then posed as to whether, and if so, in what way, the sponsors adjusted their behaviour in order to fulfil the requirements. Furthermore, the chapter examines whether certain conditions affect specific groups more than others. Following this analysis, chapter 7 addresses the question of the impact of the requirements on the integration of both the sponsor and the family members. Special attention is paid to the pre-entry test and the integration require-
ments after arrival. Do they help family members to feel at home and to participate in the host society?

Chapter 8 brings the study to an end by presenting a series of conclusions. It reflects on the aims of restrictions being introduced in relation to the findings of this research on the actual impact: did the amendments promote integration or prevention of fraudulent marriages? What have been the unintended effects of new policy measures in this field? The chapter, furthermore, probes the interaction between national and European decision making on family reunification and asks the overarching question: do governments or family members benefit from the European harmonization? The goal of adopting common standards has been, not only to harmonize policies among the different Member States, but also to bridge the gap between the rights awarded to Union citizens and third country nationals. Are these goals being achieved? And what does this harmonization mean for the position of ‘own nationals’, who remain largely dependent on the national legislator?
Chapter 2
Legislation on family reunification and the legal position of admitted family members

In this chapter, the current legislation on family reunification with third country nationals and the legal position of admitted family members in the Netherlands will be presented. The similarities and differences between the different target groups covered by this study will be assessed. First, the conditions that must be met in order for a family member to join a sponsor are set out. The second part of the chapter will analyse what requirements family members must fulfil in order to remain in the Netherlands and to consolidate their status.

While the requirements depend on the legal status of the sponsor, both sections distinguish the rights of family members of third country nationals, followed by an outline of the rights of family members of Union citizens (who exercise their right to freedom of movement). As Dutch nationals have to meet the same criteria for family reunification as third country nationals, they are not dealt with separately (for the discussion on the position of Dutch nationals, see chapter 3). Separate attention is paid to refugees and Turkish nationals, because these third country nationals enjoy more favourable conditions. The chapter does not analyse all the requirements, but focuses on the main requirements for family reunification, namely the requirements on income, the pre-entry test, the age-limit and the housing criterion. The paragraph on the legal position of the family members after admission focuses on their rights and obligations and the requirements for an independent or permanent residence permit.

Dutch immigration law is part of the administrative law. The relevant legislation that regulates family reunification and immigration in general is the Aliens Act 2000 (Vreemdelingenwet), the Aliens Decree 2000 (Vreemdelingenbesluit) and the Aliens Circular (Vreemdelingencirculaire). The Aliens Act is the legal framework that is worked out in more detail in the Aliens Decree. The Aliens Circular encompasses instructions to the Immigration and Naturalization Service (IND), based on the Act and Decree.

2.2 Third country and Dutch nationals: admission of family members

2.2.1 Personal scope

In the Netherlands, the definition of ‘family member’ entails members of the nuclear family, which are the spouse, registered partner or unmarried partner, aged 21 years and over, with a sustainable relationship and children under 18 years of age, including
children for whom they have custody. Until 1 October 2012, in certain circumstances other persons could also be admitted as family members (see also chapter 3 for an explanation on this policy change). Family members entitled to this so-called ‘extended family reunification’ included single parents aged 65 years and over, or children who had come of age, on the condition that they belonged to the family of the sponsor and were dependent on him or her for reasons of health. Unmarried partners were also allowed to reunite.

If a male sponsor has more than one spouse, only one spouse and her children are allowed to reunite with him.

**Extended family reunification (until 1 October 2012)**

Besides members of the nuclear family, other members of the family also enjoyed the right to family reunification under specific conditions. If the sponsor wanted to reunite with his or her adult child, it had to be proven that this child was morally and financially dependent on his or her parents and that this dependence had also existed in the country of origin or permanent residence. Furthermore, the child had to belong to the family at the time of departure of the family from the country of origin or permanent residence, and had to live together with his or her parents after arrival in the Netherlands. This so-called ‘effective family bond’ was assumed to have ceased if a period of more than one year had passed between the date the parent had left the adult child in the country of origin and a request for family reunification with the child had been filed, unless there were good reasons for not having submitted an application earlier. Another condition was that the fact that the adult child had been left behind constituted a ‘disproportionate harshness’. This was only the case in extraordinary situations and did not, for example, lay in general circumstances in the country of origin or in the fact that the adult child would remain in the country of origin as the sole member of the family.

A sponsor had the right to family reunification with his or her parent if this parent was single, older than the age of 65 and dependent on the sponsor, and if no other children in the country of origin could take care of the parent.

The ‘Modern Migration Policy Decree’ (*Besluit Modern Migratiebeleid*) determined that for reunification with a parent the income requirement for the child-sponsor would be raised from 100 to 150 per cent and had to be fulfilled by one child, who would be appointed as the sponsor. At the same time, it would no longer be required that all children of this parent lived in the Netherlands. However the possibility of

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3 Article 3.14 Aliens Decree. Since 1 October 2012 the right to family reunification for unmarried partners had been abolished. However, because of the announcement in the Coalition Agreement of the Rutte II Cabinet that this policy would be reintroduced, in practice the policy towards unmarried partners has been continued (see also Kamerstukken II, 2012-2013, 32 175, no. 47 and chapter 3).


5 Article 3.16 Aliens Decree.

6 Kamerstukken II, 2009-2010, 32 052, no. 6 appendix ‘Ontwerpbesluit modern migratiebeleid’, Staatsblad 2010, no. 290. Due to ICT problems it has not yet come into force.
extended family reunification was abolished even before these changes in legislation entered into force.

Since 1 October 2012, extended family reunification is only allowed if, according to the IND, there are ‘more than normal emotional ties’ between the sponsor and the family members who apply for reunification, within the context of Article 8 ECHR. Furthermore, the Secretary of State for Security and Justice maintains his or her possibility to admit family members in individual cases, in case of a situation of exceptional harshness.

2.2.2 General Requirements

If a TCN wants to apply for family reunification with his or her spouse and/or minor children, the following admission criteria have to be met:

1) Residence permit for a non-temporary goal
2) Spouses have to have reached the age limit of 21
3) Income requirement
4) Integration requirement (if a long-term visa is required)
5) No danger to the public order or internal security
6) Statement of guarantee
7) Evidence of marriage or of an exclusive and sustainable relationship
8) Evidence of parenthood of the child
9) Valid travel document
10) Other documents like GBA extract, authenticated birth certificate and evidence of nationality
11) Fees

Besides the four main requirements, elaborated in the next paragraph, four other conditions need to be highlighted briefly, as they appear to be of significance in practice.

First, the required long-term visa is of importance. The application can be submitted by the family members in their country of origin or main residence, or by the sponsor in the Netherlands. An MVV will only be granted if all the requirements have been met. The application for a residence permit submitted in the Netherlands will be rejected if no MVV can be handed over, which implies that migrants have to return to their country of origin or their country of main residence in order to apply for the MVV. This application can only be successful if the family members await the decision abroad. Nationals of the following states are exempted from the visa requirement: EU and EEA Member States, Australia, Canada, Japan, Monaco, New Zealand, South Korea, Switzerland, and the United States. Other TCNs are only exempted from the MVV requirement if it would violate Article 8 ECHR. Once admitted to the Netherlands, the family member still needs to make an application for a residence permit on family reunification grounds. In 2010, a bill, which provided for the automatic granting of a residence permit within two weeks after arrival in the Netherlands with a valid authorisation for temporary stay on the ground of family
reunification, was adopted. Due to technical implementation problems, this Act has still not entered into force.\(^7\)

Second, the sponsor must have a residence permit which has been issued for a non-temporary goal.\(^8\) Temporary grounds of residence, which do not constitute a right to family reunification, are, for instance, a visit to relatives, stay as au-pair, for reasons of study, or for the purpose of receiving medical treatment. Since 1 October 2012, the sponsor needs to have had legal residence in the Netherlands for at least one year, before he or she can apply for family reunification.

Until 9 October 2012, the cost for an admission procedure for family reunification was approximately €1,970. This amount was composed of €350 for the examination for the civic integration test abroad, €70 for preparation material, €1,250 for the MVV (visa), and €300 for the residence permit granted after arrival in the Netherlands. If two or more family members applied together for a visa, then only one person had to pay the €1,250 fee and the other one(s) €250. The total cost for the admission procedure did not include the price for a private course abroad (if available), which varied between €450 and €800 (Strik et al. 2010: 12). Since 9 October 2012, the level of the fees for a visa or residence permit for family reunification reasons has been lowered to €225; if a visa is required and the family members enter the Netherlands lawfully, no fees are required for the residence permit. This decrease is the result of the ECJ decision on the Dutch fees for long-term residents, which the court considered as ‘extraordinarily high’, and, therefore, not in compliance with (the objective of) Directive 2003/109.\(^9\) On 9 October 2012, the Judicial Division of the Council of State (highest administrative court) decided that the reasoning of the ECJ was also applicable to the fees for family reunification in relation to Directive 2003/86 (see further chapter 5).\(^10\)

Besides evidence of their fulfilment of the above-mentioned conditions, applicants need to show proof of their identity, nationality and family relationship: a valid identity card or passport, a valid travel document and a birth certificate (if the nationality is not registered on this certificate, additional proof of nationality is required). Birth certificates need to be issued in the country of origin or permanent residence. If the family member is the spouse or registered partner of the sponsor, a marriage certificate or a certificate of registered partnership must be shown. The certificates from abroad have to be authenticated. A registered partnership needs to be registered in the Netherlands, and a copy of the registered partnership deed has to be shown. With regard to the minor children, copies of their birth certificates have to be handed over. In the case of a child from a previous relationship of the sponsor or his or her spouse or partner, documents relating to parental authority have to be shown, as well as a declaration of consent from the other parent with regard to the child’s departure

\(^7\) Wet Modern Migratiebeleid, Staatsblad 2010, no. 290.

\(^8\) Article 3.15 (1)(b) jo. 3.5 Aliens Decree.


\(^10\) ABRvS, 9 October 2012, 201008782/1/V1.
from the country of origin. Also, a copy of the other parent’s ID to verify the signature needs to be submitted. If the other parent refuses to give this consent, cannot be found or is deceased, a competent foreign authority can give the necessary consent. When a legal father is absent, the child is assumed to be in the custody of the mother. In this case, no further proof of custody is required.

2.2.3 The main requirements

The four main requirements, central in the comparative research, will be elaborated in detail below. These are the requirements on income, pre-entry test, age-limit and the housing criterion.

Income
The sponsor is required to have sufficient, independent and sustainable resources.\(^{11}\) The resources are regarded as sufficient if they are at the level of social security, which is equivalent to the monthly minimum wage of, from 1 January 2013, €1596.95 gross for a couple with or without children.\(^{12}\) Dutch legislation does not distinguish between families with no, or one or more children and, therefore, requires the same level of income for each family. For a single parent who wants to reunite with his or her child(ren), the required income level is, from 1 January 2013, €1428.26.\(^{13}\)

The independence criterion implies that the resources are acquired from employment, self-employment or social welfare for which the sponsor has previously paid contributions, or own assets.\(^{14}\) Resources are sustainable if the income will be available for at least one year after the date of application or the date of receiving the decision.\(^{15}\) A permit will also be granted if the sponsor had an employment contract for the past three years before the application date.\(^{16}\) In that case, sponsors must prove that their income met the required minimum level each month during those three years. In the case of self-employment, sponsors must have resources that have been available for at least one year and that are still available at the time of application or the date of receiving a decision.\(^{17}\) Sponsors who have reached the age of 65 years, or are permanently and completely unable to work, are exempted from the income requirement.\(^{18}\)

The pre-entry test
TCN spouses, who need an ‘MVV’ in order to travel to the Netherlands for family reunification, also need to pass a civic integration abroad test (basis examen inburgering

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11 Article 16 (1)(c) Aliens Act.
12 www.ind.nl (search for Tabel normbedragen voldoende geld). At the moment of comparison, November 2012, the required level of income was €1,572.70 gross monthly.
13 www.ind.nl (search for Tabel normbedragen voldoende geld). At the moment of comparison, November 2012, the required level of income was €1,415.43 gross monthly.
14 Article 3.73 Aliens Decree.
15 Article 3.75 (1) Aliens Decree.
16 Article 3.75 (3) Aliens Decree.
17 Article 3.75 (2) Aliens Decree.
18 Article 3.22 (2) Aliens Decree.
The integration test is taken at a Dutch embassy or consulate abroad. It consists of a language test and questions regarding Dutch society. The candidate answers the questions by phone, after which a computer based in the United States assesses whether the candidate has passed the examination. There is no possibility to appeal against the result of the examination (Strik et al. 2010: 210).

No courses are offered, but a self-study package can be bought for about €110. This package is available in 18 languages and includes a DVD about the Netherlands and practice examinations. In practice, in countries where a large number of applicants live, e.g. Morocco (also in Turkey when the requirement was applicable to Turkish nationals, see 2.2.4), several courses have been developed within the private market. The quality and price vary significantly. On average, participation in a course costs €800 (Strik et al. 2010).

The family member must apply for a visa within one year after having passed the examination. After this period, the test result becomes invalid and a new test must be taken in order to be admitted. If the family member fails the test, a visa for family reunification is not issued to the applicant. As a consequence, family members must then retake the test and pay again to do so (€ 350 for each examination).

As the integration test is linked to the visa requirement, TCNs who are exempted from the visa requirement, do not need to take the pre-entry test either. Family members of Turkish nationals and highly skilled workers are also exempted from the integration requirement abroad. Surinamese nationals are exempted if they completed primary school in Surinam or the Netherlands. Persons who are permanently unable to pass an integration examination on the grounds of physical or mental handicap can be exempted from this requirement if they provide a medical certificate. Furthermore, there is a possibility to invoke a hardship clause if there are specific reasons why a sponsor fails to pass the test. In practice, however, an exemption based on the hardship clause has been granted only very occasionally.

The age limit
The minimum age limit for both spouses and registered partners from third countries is 21 years, which is three years above the age of legal majority. Children from third countries have the right to be reunited with their parents up to the age of 18 years.

The housing requirement

19 Article 3 (1)(a) jo. 5 (1)(a) Integration Abroad Act.
20 Article 5(2) Integration Abroad Act; www.rijksoverheid.nl (search for wie basisexamen inburgering) (accessed 5 January 2012); see chapter 3.3 for the reasoning.
22 Article 6 Integration Abroad Act; Article 3.71a (2)(c) Aliens Decree.
23 Article 3.14 and 3.15 Aliens Decree.
Family members must live together and have a shared household. No requirements exist for the accommodation itself. For plans to (re)introduce an accommodation requirement see chapter 3.

### 2.2.4 Turkish nationals: admission of family members

As the standstill clauses of Regulation 1/80 and the EC/Turkey Agreement imply that the admission criteria may not be more restrictive than the criteria applicable at the time of entry into force of these treaties (December 1980), Turkish workers and their family members are subject to less restrictive criteria than other TCNs. This follows from the case law of the CJEU on the EC/Turkey Association Treaty, and more specifically the *Sahin* judgment (see para. 5.3). For this reason, the pre-entry test and the visa requirement do not apply to them and the level of fees is significantly lower than those for third country national or Dutch sponsors. They only have to pay €40 for the application for a residence permit after arrival in the Netherlands. It can be questioned whether the case law of the CJEU allows other requirements to be maintained, such as the age limit of 21 years and the income requirement of 100 per cent of the minimum wage, as these restrictions were introduced after the entry into force of the Association Treaty (see also chapter 5).

### 2.2.5 Refugees: admission of family members

Special rules apply to refugees who want to reunite with their family members. All migrants who are granted asylum-related protection are granted a uniform residence permit. This permit grants the rights to which Convention refugees are entitled, even if the reason for protection is based on Article 3 ECHR, on humanitarian grounds or on the general circumstances in the country of origin. Under the condition that the family members have applied for reunification within three months after the sponsor has been granted protection, the family members are granted a derivative residence permit with the same rights as the sponsor. They have to meet two additional conditions: the family member must have the same nationality as the sponsor and must have belonged to his or her family at the time of his or her departure from the country of origin. This provision applies to the spouse and minor children, and also to the unmarried partner or adult child if they are dependent on the sponsor. In that case, the requirements on income, integration, fees and long-term visa are waived. In practice, most family members request a visa to facilitate their travel to the Netherlands.

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24 Article 3.17 Aliens Decree.
26 [www.ind.nl](http://www.ind.nl) (search for leges gezin) (accessed 2 March 2012) (see chapter 5).
27 For these grounds, see Article 29 (1) a-d Alien Act. For the legal ground of the permit, see Article 28 Alien Act.
28 Article 29 (1) e and f Alien Act.
29 For further specifications of the conditions mentioned in Article 29, see paragraph C2/6.1 Aliens Circular.
The criterion of ‘belonging to the family’ goes beyond proof of the relationship. Dutch law additionally requires the existence of a so-called ‘effective family bond’ between parents and children, which must be distinguished from biological family ties (Article 3.14 sub 1 under c Aliens Decree). The main criteria are that the family relationship pre-existed in the country of origin (they must have lived together at the time of departure of the sponsor) and that the child is and was morally and financially dependent on the parent (Article C2/6.1 Aliens Circular). This implies that admission can be denied, despite the fact that the relationship between the family members is clear. It means, for instance, that children who were housed with another family before the sponsor departed from the country of origin are not entitled to family reunification. There are also cases known of refugees who married during their stay (in a refugee camp) outside the country of origin, and, therefore, are not able to meet the requirement of having an ‘effective family bond’. In one case of Somali spouses, the husband was deported from Kenya to Somalia again, from where he immediately fled to the Netherlands. His spouse was denied admission, as they had not lived together in the country of origin before the departure of the sponsor (see para. 5.2).

In the case of foster children, an additional rejection ground exists. If they were housed with another family after the sponsor departed the country of origin, they are considered as no longer belonging to the family. According to the Coalition Agreement of the Rutte II cabinet, foster children will not be admitted any longer in the near future, regardless of their bond with the foster family.

If the family members apply for reunification after the three-month time-limit, or in the case of family formation, the requirements on income, fees and visa have to be met. However, in conformity with Article 7 (2) of the Family Reunification Directive, they are exempted from the integration abroad requirement. If the family members have a different nationality, it will be assessed whether the family reunification can take place in another country. This requires that all family members must be admitted there for sustainable settlement. If this is not the case, the family members can apply for a regular temporary residence permit, but without having to fulfill the requirements for a regular residence permit as regards income, integration and MVV.

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30 According to Article 29(1)(e) and (f) of the Aliens Act 2000 and under the proposed Article 29(2)(a)(b)(c) and (d) an asylum permit can be granted to a person:
29(1)(e) Who as wife, husband or minor child de facto belongs to the family of the immigrant who has been granted refugee status under (a, b, c or d) of Article 29 indent 1, who has the same nationality as the main applicant and entered the Netherlands at the same time, or within 3 months of the date at which the residence permit meant in subsections a and b above, has been granted (family reunion);
29(1)(f) Who as partner or child above the age of 18, is dependent upon the alien referred to in Article 1 under a, b, c or d, and for this reason belongs to his/her family, having the same nationality and having entered the Netherlands at the same time or within 3 months of the date on which the residence permit under subsections (a and b) above was granted (extended family reunion). (Unofficial translation).

31 Coalition agreement VVD-PvdA, Bruggen Slaan, 29 October 2012.
there is an alternative settlement option in another country, all requirements for a regular family reunification procedure are applicable.

2.3 Union citizens: admission of family members

If an EU citizen has the right to residence on the basis of the Union Citizens Directive (2004/38) in a Member State, the members of his or her nuclear family are also entitled to residence. The sponsor has the right to reunification with the following family members: the spouse or registered partner, children (of the sponsor and/or spouse or partner) up to the age of 21 years, and his or her parents if they are dependent on him or her. Other family members who are direct descendants of the sponsor are admitted if they are dependent on the sponsor or lived together with him or her in the country of origin. Furthermore, family members are allowed to join an EU citizen if they need the personal care of the sponsor due to serious health problems. The family members do not need to possess EU citizenship themselves. A long-term visa (MVV) is not required.

EU citizens are not required to prove a certain level of income in order to reunite with their family members, as long as they can show that they are (self) employed or that they are residing in the Netherlands in order to find a job and have a real chance of being successful. However, sponsors of economically non-active family members are required to have sufficient resources for themselves and their family members in order to be entitled to reside legally in another Member State. According to Article 8 (4) of the Union Citizens Directive, Member States may not require a fixed amount which they regard as ‘sufficient resources’, but must take into account the personal situation of the person concerned. In all cases, the required level shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance. The Dutch legislation requires that these Union citizens have an income of at least the level of social welfare.

Family members of EU citizens do not need to pass the pre-entry test. There is no age limit for either the spouse or registered partner of the EU citizen, or the sponsor. Children can be reunited with their parents up to the age of 21 years. There are no housing requirements for EU citizens and their family members.

In addition, family members need to possess a valid travel document and must not constitute a danger to public policy, national security or public health. Family members who are not economically active need to have sickness insurance. No fees are required for a residence permit for family members of EU citizens.

32 Article 8.7 (2) Aliens Decree.
33 Article 8.7 (3)(a) Aliens Decree.
34 Article 8.7 (3)(b) Aliens Decree.
35 Article 8.12 (3) Alien Decree.
36 Article 5 (2)(b) Civic Integration Act.
37 Article 8.7 (2)(c) Aliens Decree.
38 Article 8.8 Aliens Decree.
2.4 Third country and Dutch nationals: rights and obligations of family members after arrival

2.4.1 Temporary residence

Dependent residence rights
Admitted family members are granted a temporary residence permit for the purpose of family reunification.\textsuperscript{39} The permit is usually first issued for one year and afterwards for four years. However, it can be renewed every year.\textsuperscript{40} Each renewal costs €150 and at every renewal the authorities assess compliance with the requirements.\textsuperscript{41} On the basis of the Modern Migration Policy Act (\textit{Wet Modern Migratiebeleid}), which has already been adopted (it is still unknown when it will enter into force), admitted family members will be entitled to a residence permit which is valid for five years.\textsuperscript{42} After arrival with an MVV, they will be granted this permit after two weeks. Admitted family members have the same rights to education and work as the sponsor. This means that if the sponsor is allowed to work in the Netherlands, the family member is allowed to work as well. Holders of a temporary residence permit also have the right to education. This does not only include primary education, but also secondary and vocational education.\textsuperscript{43} Family members of highly skilled workers have a more favourable position, as they enjoy free access to the labour market and are exempted from the integration obligations.\textsuperscript{44}

Integration requirement
The Civic Integration Act was amended significantly in September 2012 with the aim of emphasizing the own responsibility of migrants (see para. 3.3). These amendments entered into force on 1 January 2013. Before that date, family members between the ages of 18 and 65 years had to pass a civic integration test within 3.5 years of arrival in the Netherlands.\textsuperscript{45} The test still consists of an examination in reading, writing, listening and speaking skills at level A2.\textsuperscript{46} Until January 2013, the examination includ-

\textsuperscript{39} Article 3.4 (1)(a) Aliens Decree.
\textsuperscript{40} Article 3.57 Aliens Decree.
\textsuperscript{41} IND 2010, www.ind.nl (search for \textit{leges gezin}).
\textsuperscript{43} See amongst others Article 7.32 (5) Higher Education and Scientific Research Act; Article 27 (1a)(a) Secondary Education Act and Article 8.1.1 (1)(c) Education and Vocational Education Act.
\textsuperscript{45} Articles 7, 16 (1)(h) and 14 (2) Aliens Act jo. Article 3 (1)(a) Civic Integration Act.
\textsuperscript{46} The language proficiency level referred to is set out in the Council of Europe’s ‘Common European Framework of Reference: Learning, Teaching, Assessment’ (CEFR). A person with level A2 is defined as: ‘Can understand sentences and frequently used expressions related to areas of most immediate relevance (e.g. very basic personal and family information, shopping, local geography, employment). Can communicate in simple and routine tasks requiring a simple and direct exchange of in-
ed the requirement of making a portfolio which included examples of practice of daily life situations. Persons who were ‘evidently’ integrated because they already had a good knowledge of Dutch language and society could apply for a shortened exemption test at level B1.47

From 1 January 2013, migrants have to pass the test within three years of their arrival. This term can be extended by two years if they are illiterate. Migrants who can prove that they are permanently incapable of doing the test and those who can prove their knowledge of the Dutch language with diplomas or certificates are exempted from taking the test.48

Before 1 January 2013, municipalities offered public integration courses preparing participants for the civic integration test. They were allowed to make participation obligatory. In most municipalities the courses were offered for free. Since January 2013, migrants have had to finance and organize their participation in a course themselves.49 If they lack the financial resources to do so, they can obtain a loan from the government.50 The education infrastructure is left to the initiative of the market. Under the new Act, the obligation to make a portfolio is no longer part of the examination.

The amendment also included the possibility for the government to withdraw or not renew the temporary residence permit of migrants who do not pass the integration test within three years. However, the government has already admitted that its obligations under Article 8 ECHR and the Family Reunification Directive will constitute an obstacle in applying this ground for withdrawal or non-renewal to family members (see also para. 3.3).

2.4.2 Independent or permanent residence rights

Family members are able to apply for a permanent residence permit when they have stayed five successive years in the Netherlands and passed the integration test. Furthermore, they must have sufficient, independent and sustainable income and health insurance, and not constitute a danger to public order or national security.51 The income of both spouses will be taken into account. In two cases the permanent or independent permit can also be granted without fulfilling the integration requirement: after ten years of residence, or if an adult migrant has been admitted on the ground of family reunification as a minor and has resided in the Netherlands since then, unless the family relationship terminated within a year. If the family migrant was born in the Netherlands, or admitted before he or she was four years old and has lived in the Netherlands since then, the permanent residence permit can only be refused on

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48 Article 5 and 6 Civic Integration Act.
49 Staatsblad 2012, no. 430.
50 Staatsblad 2012, no. 430.
51 Article 21 (1) Aliens Act.
grounds of public order (only if it concerns a criminal judgment of 60 months or more for drug trafficking) or national security.\textsuperscript{52}

Until 1 October 2012, spouses with a residence permit for family reunification had a right to an independent residence permit after three years of residence. This entails a temporary residence permit with the restriction of ‘continued residence’ (\textit{voortgezet verblijf}), even if the relationship has ended.\textsuperscript{53} The (former) spouse does not need to fulfil the income requirement, but he or she has to pass the integration test. This temporary permit can be renewed until the requirements for a permanent residence permit have been fulfilled. In special individual cases, for example, if a marriage or relationship ends because of domestic violence, an independent residence permit can also be granted if residence is less than three years.\textsuperscript{54} However, since 1 October 2012, the three-year period has been extended to five years (see chapter 3).

\textit{Differences between temporary and permanent residence rights}

The legal position of the holders of a temporary residence permit and a permanent residence permit mainly differ in the grounds on which the permit can be withdrawn. A permanent residence permit can only be withdrawn for three reasons.\textsuperscript{55} Firstly, if the migrant has stayed 12 months or longer outside EU territory, or six years or longer outside Dutch territory. Secondly, the permanent residence permit can be withdrawn if the permit was obtained fraudulently and thirdly, for reasons of public order or national security if someone is convicted of a serious crime.

A temporary residence permit can be withdrawn for several more reasons, as stipulated in Article 18 jo. 19 of the Aliens Act. This is for instance the case if the income requirement is no longer being met, if the migrant has his or her main residence outside the Netherlands, if he or she has supplied incorrect information or withheld relevant information where such information would have led to the rejection of the application, or if the migrant poses a threat to public order or national security.\textsuperscript{56} If someone holds a temporary residence permit, it is more readily assumed that he or she poses a danger to public order or national security than if that person has a permanent residence permit. Whether this is the case depends on the length of the stay related to the severity of the offence (expressed in the unconditional part of the penalty).\textsuperscript{57} Since 1 July 2012, the norms of this ‘sliding scale’ have been restricted significantly. For instance, during the first three years of residence, any crime for which the migrant has been convicted, which carries a legal sanction of two or more years imprisonment, can lead to an expulsion order, even if the actual sentence is only one day’s imprisonment.

\textsuperscript{52} Article 21a Aliens Act.
\textsuperscript{53} Article 3.51 (3) Aliens Decree.
\textsuperscript{54} Article 3.52 Aliens Decree.
\textsuperscript{55} Article 22 Aliens Act.
\textsuperscript{56} Article 18 (1) jo. 19 Aliens Act.
\textsuperscript{57} Article 3.86 Aliens Decree.
2.4.3 Turkish workers: rights and obligations of family members after arrival

Because of the standstill clauses of Regulation 1/80 and the EEC/Turkey Agreement, Turkish workers and their family members are exempted from the integration obligations after admission. This means that they don’t have to pass the integration test within three years after admission, or for the granting of a permanent or independent residence permit. For the same reason, it also remains possible for them to apply for an independent residence permit after three years of residence, while this period for other TCNs has been extended to five years.

2.4.4 Refugees: rights and obligations of family members after arrival

Because of the system of a uniform asylum status, family members with the derivative asylum permit enjoy the same rights as Convention refugees and those protected on other grounds. This includes free access to the labour market and the right to education, including secondary and vocational education. Family members of holders of an asylum-related status are also obliged to fulfil the integration requirement within three years after admission (see 2.4.1). Whereas from 1 January 2013 onwards ‘regular’ migrants can obtain a loan up to a maximum of €5,000 to finance their integration course, refugees and their family members are granted the financial means to participate in integration education. Although the temporary residence permit can be withdrawn or not renewed if the integration criterion is not met, the Minister for Immigration, Integration and Asylum has already admitted that this will not be applicable to refugees and their family members.

As the regular conditions for family reunification do not apply to refugees, family members face fewer chances of withdrawal or non-renewal grounds while they enjoy a temporary residence right. A derivative asylum permit may be withdrawn, together with the permit of their sponsor, if the situation in the country of origin has improved substantially and sustainably. The requirements depend on the ground on which the migrant has been granted the protection status. If the ground is the applicability of the Refugee Convention, the most severe criteria apply to the withdrawal; if the protection was granted because of the general circumstances in the country of origin, the least severe criteria apply. The derivative residence permit of the family members cannot be withdrawn after divorce or decease of the sponsor, even if this occurs within a period of three or five years. In that sense, the temporary residence permit on asylum grounds is not as dependent as the permit of family members of ‘regular’ migrants.

For refugees and their family members, the same criteria apply for the granting of a permanent residence permit as for ‘regular’ migrants (see 2.4.2). The most important difference between a temporary and a permanent residence permit for this group

58 Coalition agreement VVD-PvdA, Bruggen Slaan, 29 October 2012.
59 Handelingen Eerste Kamer, 11 September 2012, 2012-2013, no. 38 item 7, p. 36.
is that a change in the general situation in the country of origin can have consequences for a temporary residence permit, but not for a permanent one.

2.5 Union citizens: rights and obligations of family members after arrival

Family members of Union citizens are granted a temporary residence permit which is valid for the same period as the residence permit for the sponsor if that is shorter than five years and, in other cases, a temporary residence permit that is valid for five years.\textsuperscript{60} After admission they have the right to work in the Netherlands and the right to education. This includes not only primary education, but also secondary and vocational education.\textsuperscript{61} Third country family members of Union citizens are granted a permanent residence permit when they have stayed for five successive years in the Netherlands.\textsuperscript{62}

The main difference in the legal position between holders of a temporary residence permit and holders of a permanent residence permit concerns the grounds for withdrawal. In principle, a temporary residence permit can be withdrawn where the grounds for admission are no longer applicable.\textsuperscript{63} However, five derogations apply to this principle. family members of EU nationals do not lose their permit if they have stayed in the Netherlands for at least one year and if the marriage or relationship has lasted for more than three years.\textsuperscript{64} Also, if the sponsor moves to another country, or dies, the residence permit of the family members cannot be withdrawn after one year of residence.\textsuperscript{65} Children do not lose their residence right while they are in full-time education, even if the sponsor moves or dies within one year of admission.\textsuperscript{66} Secondly, the family member with a temporary residence permit can lose his or her residence right if he or she stays longer than six months per year outside the Netherlands. Thirdly, if he or she has a valid reason, a stay abroad of twelve months is allowed.\textsuperscript{67} Fourthly, a temporary residence permit can be withdrawn if the migrant has supplied incorrect information or withheld information where such information would have led to the rejection of the application.\textsuperscript{68} Fifthly, a temporary residence permit can be withdrawn if the migrant poses a threat to public order or national security.\textsuperscript{69}

A permanent residence permit can only be withdrawn for three reasons: if the family member has stayed more than two years outside Dutch territory, if reasons of

\textsuperscript{60} Article 8.13 Aliens Decree.
\textsuperscript{61} See amongst others Article 7.32 (5) Higher Education and Scientific Research Act; Article 27 (1a)(a) Secondary Education Act and Article 8.1.1 (1)(c) Education and Vocational Education Act.
\textsuperscript{62} Article 8.17 (1)(b) Aliens Decree.
\textsuperscript{63} Article 18 (1)(f) jo. 19 Aliens Act.
\textsuperscript{64} Article 8.15 (4)(a) Aliens Decree.
\textsuperscript{65} Article 8.15 (2)(a) and 8.15 (3) Aliens Decree.
\textsuperscript{66} Article 8.15 (2)(b) Aliens Decree.
\textsuperscript{67} Article 8.15 (1)(b) Aliens Decree.
\textsuperscript{68} Article 18 (1)(e) jo. 19 Aliens Act.
\textsuperscript{69} Article 18 (1)(e) jo. 19 Aliens Act.
public policy or national security apply, or if incorrect information has been provided
or relevant information has been withheld where such information would have led to
the rejection of the application.\footnote{70 Article 8.18 (a), (b) and Article 8.25 Aliens Decree.}

Although the legal position of family members of EU citizens is stronger if they
have a permanent residence permit, the difference with a temporary permit is much
smaller compared to the situation of family members of third country nationals. The
EU Citizens Directive offers more protection to admitted family members of EU
citizens than the Family Reunification Directive does to family members of third
country nationals.

Until 1 January 2013, they were allowed to participate in an integration course for
free. After that date the amended Civil Integration Act (Wet Inburgering) does not
provide for an offer to Union citizens and their family members.

\subsection*{2.6 Conclusion}

Six different sets of requirements regarding the right to family reunification can be
distinguished, each with its own target group. From these groups, Union citizens who
can rely on Directive 2004/38 have the strongest right, followed by holders of an
asylum status, on condition that they and their family members meet certain criteria.
Turkish nationals who can rely on the Association Agreement and Decision 1/80 are
privileged as they are exempted from certain requirements which apply to other third
country nationals. Third country national spouses of highly skilled workers are ex-
empted from the pre-entry test. Another, slightly privileged group comprises third
country nationals and Dutch nationals with a third country national spouse who is
exempted from the visa requirement: they are not only exempted from the require-
ment of an MVV, but also from the connected requirement of passing the inland
integration test. The other third country nationals and Dutch nationals and their third
country national spouse (and children) face the most strict requirements for exerci-
sing the right to family reunification.

After admission, a similar distinction can be made between the rights of the fami-
ly members, although family members of Turkish nationals now have stronger rights
than family members of holders of an asylum status. Family members of Union citi-
zens are the most privileged, especially with regard to the security of their residence
status. Family members of Turkish nationals do not face integration requirements,
including those connected with their permanent or independent residence rights, and,
unlike TCNs from 1 October 2012, they continue to have the right to an independent
residence permit after three years of residence. Admitted family members of highly
skilled workers are not obliged to meet the inland integration requirement, unless
they apply for a permanent or independent residence permit. Family members of
holders of an asylum status have to meet integration requirements in the same way as
other third country nationals. The only difference is that from 1 January 2013 on-
wards, they will be offered free integration courses, while others will only be offered the possibility of a loan if they need it to participate in a course.

This quick overview shows how fragmented and complex the family reunification legislation is in the Netherlands at the moment. The reasons why it has developed in this way will be dealt with in chapters 5 and 8.
Chapter 3
Policy developments and political debate on family reunification and the legal position of admitted family members

This chapter describes the policy developments and political debate on family reunification. After a short overview of the immigration history and the way the government’s definition of integration has changed over the last ten years, the focus will be on the policy developments between 2001 and 2012, and the four main requirements: income requirement, the pre-entry test, age limits and housing. Furthermore, the legal position of admitted family members, especially after family break-up will be discussed.

3.1 Immigration history and definition of integration

The Netherlands developed into an immigration country in the second half of the 20th century. Almost ten per cent of the inhabitants have been born outside the Netherlands. A first group of immigrants came from former Dutch colonies, with high numbers of immigrants as a result of the independence of Indonesia in the 1950s and Surinam in the second half of the 1970s. Labour migrants came to the Netherlands from the 1960s and seventies from countries in the Mediterranean, Southern Europe, Turkey and Morocco. In 1975, the recruitment of labour migrants was stopped, but many migrants who were already in the Netherlands, brought over their families. Family reunification is now the major form of migration to the Netherlands. This is not only the consequence of former labour migrants and their second generation children bringing over their spouses. As a consequence of globalization, the marriage market has become international. The largest group of persons who bring over a family member to the Netherlands comprises Dutch-born white men and – to a lesser extent– women (35 per cent in 2008). 71 The adult children of labour migrants, post-colonial migrants and asylum migrants also bring over family members from the country of origin of their parents. Since the 1980s, asylum seekers from Eastern Europe, Asia and Africa have made up a considerable part of immigration, which peaked in the 1990s as a consequence of the war in former Yugoslavia.

The Netherlands has had a so-called minority policy since the 1970s, which aimed to preserve migrants’ identities, assuming that labour migrants who had come to the Netherlands in the preceding decades would return to their countries of origin. The underlying idea was that the Netherlands was not an immigration country and that family reunification policy should be restrictive (De Heer 2004: 178). A shift

occurred with the report, *Ethnic Minorities*, published by the Scientific Research Council in 1979, which stated that immigration was permanent. It was suggested that the legal position of immigrants should be improved, making it as similar as possible to Dutch nationals. The government accepted the goal of improving the legal position of immigrants, but at the same time contended that restrictive immigration policies were required, in order to prevent social exclusion. In this context, the concept of ‘civic integration’ was formulated for the first time, defined as: actual participation in Dutch –multicultural– society. Minority policy was transformed into integration policy (De Heer 2004: 180).

In the 1990s, the government talked about ‘social integration’, which meant a process of mutual acceptance, in which both the newcomer and society had to make efforts. Nevertheless, the government limited its own role and stressed the individual responsibility of migrants. For the first time, the government announced its intention to reduce admissions, which was seen as a precondition for integration (De Heer 2004).

The post-9/11 period, and especially the murder in May 2002 of populist politician, Pim Fortuyn (LPF), by an animal activist, led to a changing paradigm in integration. Although the newly installed Balkenende I cabinet including the populist party LPF was short-lived, it had a profound influence on the immigration and integration discourse, since the larger political parties tried to regain the trust of voters by doing things differently from before (Bonjour 2009: 244). The idea emerged, shared from right to left, that integration policy had been unsuccessful. On the initiative of the Socialist Party, a parliamentary Commission studied the question of why, rather than if integration policies had failed. Political parties did not accept the commission’s conclusion that the integration of immigrants had been largely successful – in spite of rather than as a result of integration policies. The murder of Dutch film maker, Theo van Gogh, in November 2004 by a Dutch-Moroccan youngster only reinforced the idea that a new, firm integration policy was necessary and created an atmosphere of crisis and failure. Ethnic diversity was seen as a threat to social cohesion (Bonjour 2010: 301-302). Since then, the subsequent cabinets have set increasingly higher standards for the level and pace of integration and an emphasis on pressure and sanctions (Groenendijk 2012). According to the government’s response to the European Commission’s Green Paper on the right to family reunification, family reunification was especially problematic in relation to integration, because backward positions were transmitted to the next generation. Furthermore, the government pointed to its growing awareness that its possibility to further integrate migrants was limited, and that integration had to come from the individual migrants themselves. The new paradigm in Dutch integration policy seems to be ‘integration by exclusion’ instead of inclusion of those immigrants thought to be unwilling to integrate, or incapable of integrating, by either refusing admittance or permanent residence and, starting in 2013, expelling them (De Vries 2012).

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3.2 Developments in requirements for family reunification over the past 10 years

Family reunification has met with restrictive measures since the 1990s, with the introduction of the strict income requirement in 1993, the Fraudulent Marriage Prevention Act of 1994 and the abolition of the strong residence permit for married partners in the same year. With these measures, which were a reaction to the awareness that family reunification constituted 70 per cent of immigration to the Netherlands, the Dutch government broke away from its liberal policy of the 1980s (Bonjour 2009: 199).

3.2.1 The income requirement

The income requirement in 1993 was 70 per cent net of the social welfare level for married couples and 100 per cent for unmarried couples. It was introduced with reference to integration problems and the ‘own responsibility’ of the sponsor for the admitted family members, financially and otherwise. The income requirement was criticized from the moment of introduction because it would indirectly discriminate against women, because of their disadvantaged labour market position and care tasks, and, hence, would violate the Convention on Elimination of Discrimination of Women (Steenbergen et al. 1999: 220-221, Holtmaat 2000: 42). The Dutch government, however, denied that the income requirement would cause problems for more women than men (De Hart 2003: 115).

The government of the PvdA, D66 and CDA announced a rise in the income requirement to 100 per cent in their coalition agreement of 1998, and it was introduced in the new Aliens Act 2000. Again, the financial responsibility of the sponsor was the main argument; it met with little resistance in parliament, which indicates that it was accepted that family reunification could be conditional (Bonjour 2009: 226). When in 2002, the CDA formed a government with the VVD and LPF, restricting immigration, especially family formation, was one of their priorities. They planned to introduce an income requirement of 130 per cent. After the fall of this short-lived cabinet within three months, the Balkenende II Cabinet of the CDA, D66 and VVD limited the increase to 120 per cent. The earlier exceptions to the income requirement, such as for sponsors with children under five years, and persons above the age of 57.5, were abolished as of 1 November 2004, and the required income level was raised to 120 per cent net of the social welfare in all cases of family formation (not family reunification), including persons under 23 years. The government stated that this level would be in compliance with the Family Reunification Directive (Article 7 section 1) (Strik 2011: 205).

The higher income requirement was thought necessary because of the lack of integration of ‘non-western migrants’ and the social consequences of this lack although, as we have already seen, Dutch-born white sponsors formed the largest group of sponsors of family formation. Minister Verdonk (conservative liberal VVD) saw family formation as the consequence of the choice of partner by second generation migrants who married a partner from the country of origin of their parents. These partners, according to the government had characteristics that were ‘unfavourable’
for integration, such as low education and a lack of identification with western norms and values. The government especially aimed at second generation sponsors with a Turkish or Moroccan background (WODC 2009: 14-15). Furthermore, the Dutch government expected that an increased income requirement would have an emancipating effect on female sponsors with a migrant background, who would then improve their labour market position.\textsuperscript{73} This argument fitted with a discourse that had emerged in the 2000s on ‘import brides’ as the most unwanted category of migrants. Statistics showing that women made up the slight majority of family migrants – 60-65 per cent between 1995 and 2004 – played a role here.\textsuperscript{74} They were represented as low educated women flown in directly from Morocco or Turkey, in all likelihood against their will (Bonjour & De Hart 2013).

The government stated explicitly that it expected that the income requirement would result in a reduction in family formation of 45 per cent.\textsuperscript{75} It was decided not to request a lower income from people below the age of 23 years, because that would undo the effects of the measure.\textsuperscript{76} On the same date, the age limit of 21 years was introduced, which will be discussed below.

As before, the stricter requirements were met with criticism. The Minister of Immigration and Integration rejected the claim by migration law scholars that 120 per cent of the minimum wage and the distinction between family reunification and family formation were not allowed by the Family Reunification Directive. An evaluation instigated by a motion of Green Left demonstrated that family formation had dropped by 37 per cent since the stricter income requirement was introduced, and that women were more strongly affected than men (48 per cent against a 32 per cent drop), as had been claimed by women’s organizations in the 1990s (WODC 2009). Furthermore, sponsors from a migration background were affected more than Dutch-born white sponsors. The admissions of partners of female sponsors of Turkish background had dropped by 57 per cent, whereas that of Dutch male sponsors had dropped by 22 per cent. Nevertheless, the government concluded that the income requirement had had ‘positive effects, improved the labour market position of partners and sponsors and had resulted in a decrease in family formation. In the same letter, the government announced further measures to restrict family formation, and this will be discussed below.\textsuperscript{77}

It was the Court of Justice of the European Union (CJEU) with its ruling in the Chakroun case that forced the government to change its position. The court ruled that both the level of the income requirement for family formation and the distinction between family formation and family reunification violated the Family Reunification

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\textsuperscript{73} Staatsblad 2004, no. 496.
\textsuperscript{74} Netherlands Statistics 2011.
\textsuperscript{75} Explanatory memorandum (\textit{Nota van Toelichting}) to the decision to amend the Aliens Decree 2000, \textit{Staatscourant} 27 October 2004, no. 2004/207, p. 3.
\textsuperscript{76} Brief van de Minister voor Vreemdelingenzaken en Integratie, \textit{Kamerstukken II}, 2004-2005, 19 637, no. 901, p. 3.
\textsuperscript{77} \textit{Kamerstukken II}, 2009-2010, 32 175, p. 3.
Directive (see further chapter 5). Some parties in the Second Chamber were outraged by the CJEU verdict in *Chakroun*, requesting the minister to look into the possibilities to maintain the 120 per cent or adapt the directive. The Dutch government lowered the income requirement to 100 per cent of the minimum wage, the same as for family reunification. However, the law was adapted only to the extent necessary, as the government claimed that the CJEU’s ruling that an individual assessment was required had already been taken into account in existing regulations.

### 3.2.2 The pre-entry test

Since 2000, the CDA had regularly proposed obliging family migrants to integrate in their country of origin, before their admission into the Netherlands. One year after the introduction of the Aliens Act 2000, Minister of Integration Van Boxtel (progressive liberal party D66) proposed that the family migrant should have to pay half of the costs of integration courses before admission. In the meantime, the Netherlands tried to negotiate the introduction of integration requirements into the Family Reunification Directive, together with Germany and Austria (Strik 2011: 203). In parliament, the VVD put forward motions to introduce examinations before admission into the Netherlands. These three parties, the CDA, VVD and D66, formed the new government in 2003, which announced in its coalition agreement that everyone who migrated to the Netherlands voluntarily, had to learn Dutch at a basic level before admission. One year later, in 2004, the Integration Abroad Act was introduced in parliament and it came into force in 2006. Since then, family members who need a long-term visa have had to pass a test on language and societal knowledge in their country of origin before admission. The Netherlands was the first country within the European Union to introduce such a pre-entry test.

The Integration Abroad Act aimed to make the integration process in the Netherlands more ‘efficient and effective’. This was to be achieved by appealing to the responsibility of both the family member and the sponsor for the integration process even before coming to the Netherlands. According to the government, the reasons behind the introduction of the pre-entry test were the integration problems that especially occurred in cases of family reunification (in 2002 this was more than 38 per cent of the total migration), because it put mainly Turkish and Moroccan communities at a disadvantage. The plans for the Act were grounded in a problem definition which included gender issues, such as dependence and the vulnerability of women, their oppression and domestic violence. Differences in values and norms considered problematic were related, firstly, to gender, family and sexuality (Bonjour 2010: 302). The government considered the pre-entry test as a selection mechanism for the ad-

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78 *Chakroun* [2010] CJEU C-578/08 (04 March 2010); see chapter 5.
80 *Kamerstukken II*, 2009-2010, 32 175, nr. 8, p. 3.
82 *Kamerstukken II*, 2003-2004, 29 700, nr. 3: 4-5; see also Strik 2011: 211.
mission of migrants who had the required motivation, perseverance, and capacity to integrate successfully in the Netherlands after arrival. Migrants who did not attain basic knowledge of the Dutch language and society before arrival would also encounter problems with integration in the Netherlands after arrival and, therefore, would not obtain permission to settle. The government welcomed the expected restrictive effect that the integration requirement would have. Possible delay or even abandonment of family reunification was preferred to a situation of integration lagging behind immediately after arrival.

The Integration Abroad Act was criticized because it exempted ‘western’ nationalities from the obligation to take the test. Although the Advisory Committee on Migration Affairs (ACVZ) and the Council of State both concluded that this would be in conformity with international law, the ACVZ argued that a substantial justification ground was required for exempting certain nationalities (ACVZ 2003: 12). Furthermore, both the ACVZ and the Council of State held that the integration test should not apply if it violated the right to family life (Article 8 ECHR). This criticism persisted after the introduction of the test, when Human Rights Watch stated that the test was discriminatory, as only certain nationals had to pass the pre-entry test and this difference in treatment had no relation to the aim of better integration in the Netherlands (HRW 2008: 24-29).

The government rejected these critiques and argued that the countries that were exempted were socioeconomically, socially, and politically similar to European countries. Hence, migration of nationals from those countries would not lead to unwanted and uncontrolled migration to the Netherlands, or to substantial difficulties integrating into Dutch society. The government also declared that a pre-entry test for those nations would be harmful to Dutch international and economic relations.

The evaluation of the Integration Abroad Act in 2009 showed that the A1-minus level was so low that the migrants were not well enough prepared for the language level necessary for good functioning and integration in the Netherlands. It also demonstrated that the number of long-term visa applications dropped by 48 per cent and 54 per cent respectively from Turkey and Morocco. The test led to self-selection by partners: 75 per cent had higher education, more than before 2006. It was also demonstrated that the examination was sometimes hard to do for people living in countries where there was no Dutch embassy, such as Afghanistan.

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83 Explanatory memorandum (Nota van Toelichting) to the decision to amend the Aliens Decree 2000 with regard to the integration exam abroad, Staatsblad 2006, no. 94: 5; see also Bonjour 2009: 263.
91 Explanatory memorandum (Nota van Toelichting) to the decision to amend the Aliens Decree 2000 with regard to the integration exam abroad, Staatscourant 2010, nr. 13 998: 5.
bureau that studied the Integration Abroad Act at the request of the government concluded that introduction of written knowledge would result in the exclusion of large groups of family migrants, unless the Dutch government provided education facilities.\(^9\) However, the government announced on 2 October 2009 that it would raise the level to A1 and extend the test with a reading test. With this higher level of the integration examination the government expected a more successful integration in the Netherlands.\(^9\) The Council of State and ACVZ highlighted the risk that illiterates would be excluded from family reunification and indicated that it might violate the Family Reunification Directive and the Association Agreement with Turkey.\(^9\) The government rejected their advice, and the higher level became effective from 1 April 2011.\(^9\)

At the same time, the so-called hardship clause (hardheidsclausule) was introduced, which gives the minister the possibility to grant an application if the refusal leads to injustice of a paramount nature, even if the migrant does not have a valid visa and is not exempted from the visa requirement.\(^9\) It only applies in very special circumstances, such as medical emergencies, human trafficking, and domestic violence. This is illustrated by the Imran case, discussed in chapter 5. Since the increase to level A1, the number of successful examinations dropped from 88 per cent in 2009 to 75 per cent after 2011. For Chinese family members it dropped from 89 per cent to 58 per cent (see further chapter 6 about the quantitative effects).

### 3.2.3 The age requirement

Since 2004, both the sponsor and spouse have been required to be at least 21 years old.\(^9\) The age limit for family reunification has remained at 18 years. According to the government, the reason for this higher age requirement is that at 18 it is not sufficiently guaranteed that the sponsor can comply with his or her responsibilities, both financially and in terms of integrating the new family member.\(^9\) At the age of 21, people would be better equipped to escape the influence of parents and other family members or traditional norms in their decision making.\(^9\) Hence, the age requirement was seen as a measure to combat arranged or forced marriages.

In its advice, the ACVZ argued that age would usually not play a role with regard to arranged marriages and that the age limit would create two categories of Dutch residents: those who could have a relationship or marriage from the age of 18, and

\(^{92}\) Triarii (2009), ‘Randvoorwaarden niveau A 1 Inburgeringsexamen Buitenland’.

\(^{93}\) Explanatory memorandum (Nota van Toelichting) to the decision to amend the Aliens Decree 2000 with regard to the integration exam abroad, Staatscourant 2010, no. 13 998, pp. 5-6.


\(^{95}\) Kamerstukken II, 2009-2010, 32175, no. 1, p. 9. Explanatory memorandum (Nota van Toelichting) to the decision to amend the Aliens Decree 2000 with regard to integration exam abroad, Staatscourant 2010, no. 19 338. See also Strik et al. 2010: 38-39.

\(^{96}\) Article 3.71 (4) Aliens Decree.

\(^{97}\) Explanatory memorandum (nota van toelichting) to the decision to amend the Aliens Decree, Staatsblad 2004, no. 496.

\(^{98}\) Ibid., p. 9.

\(^{99}\) Ibid., p. 11.
those who could only enjoy family life at the age of 21 years because their partner came from a third country. In a 2009 evaluation on the effects of the increased age requirement, the researchers concluded that it did not result in better integration or that the parents had much influence on their son’s and daughter’s choice of partner.\textsuperscript{100} Nevertheless, in October 2009, the government announced its plans to raise the required age for family migration to 24 years.\textsuperscript{101} As this went beyond the age limit allowed by the Family Reunification Directive, the government stated its intention to advocate an amendment to the directive in this respect.\textsuperscript{102}

Because of the fall of the VVD/CDA Cabinet in April 2012, and because in the discussions about the Green Paper on the right to family reunification by the European Commission it became clear that other Member States did not want amendment of the directive, nothing has come of this yet.\textsuperscript{103} However, the VVD and PvdA Cabinet, installed in November 2012, announced its intention to persist in these efforts.

The \textit{Chakroun} decision of the CJEU, mentioned above, ruled that a distinction between family formation and family reunification was prohibited (see chapter 5). In response to that judgment, the government also applied the age limit of 21 years to family reunification.\textsuperscript{104}

\subsection*{3.2.4 The housing requirement}

Since the 1980s, migrants with permanent residence have needed suitable housing (meaning comparable to a Dutch family in the same circumstances, as decided by the municipality), although Dutch and refugee sponsors have not (Van Walsum 2008: 245).\textsuperscript{105} With the Aliens Act of 2000, this requirement was abolished without much ado. In practice, the requirement was not applied even before then (WRR 2001: 75).

In 2009, the plan to reintroduce the housing requirement in order to prevent ‘overcrowded accommodation and inconveniences’ was withdrawn, because it was expected to be ineffective, due to the Dutch housing system.\textsuperscript{106} It resurfaced in September 2010, when the newly installed cabinet of the VVD and CDA, supported by the PVV, announced the introduction of an obligation to have independent accommodation, which should prevent the partner from pressure by the family-in-law. The requirement was explicitly related to the emancipation of women.\textsuperscript{107} Hence, again, the government proposals were built on certain images of a lack of integration and the emancipation of female Turkish and Moroccan migrants.

\begin{footnotes}
\item[101] Kamerstukken II, 2009-2010, 32 175, no. 1, p. 13.
\item[103] Although the minister claimed he had the support of five countries and the EC promised to install an expert commission. Kamerstukken II, 2011-2012, 32175, no. 30, p. 11.
\item[104] See Kamerstukken II, 2009-2010, 32 175, no. 8.
\item[105] Aliens Implementation Guidelines (\textit{Vreemdelingencirculaire}) 1994, B1 Article 1.2.4.
\item[107] Kamerstukken II, 2009-2010, 32 175, no. 1, p.12.
\end{footnotes}
A study at the request of the government demonstrated that the requirement of independent housing – meaning that only the core family would live in the house, not other family members – had ‘shortcomings’, as it would violate the right to family life and be difficult to put into practice. It was suggested that other forms of housing requirements would not violate the Family Reunification Directive, which allows Member States to require ‘accommodation regarded as normal for a comparable family’ but not independent accommodation (Article 7 section 1 a) (De Voogd et al. 2010). The newly formed Rutte II Cabinet (installed in October 2012) did not mention the introduction of the housing requirement in its coalition agreement.

3.2.5 The special requirements for refugees

In order to be entitled to the more favourable family reunification rules for refugees (no requirement on income and pre-entry test), the family members must demonstrate they still have an ‘effective family bond’ with the refugee (see paragraph 2.2.5). This criterion was first introduced in 1976 with regard to family members not belonging to the nuclear family, but dependent on the sponsor. As long as they had an effective family bond, they were allowed to reunite with the sponsor. In 1982, the government also started applying this requirement to minor children of the sponsor. Thus, although the criterion was initially meant to facilitate reunification of the extended family, it developed into an obstacle for members of the nuclear family. Although left-wing parties frequently criticized this criterion in parliamentary debates, it was only because of the pressure of several judgments of the European Court on Human Rights, that the government relaxed the criterion in 1997. Under the influence of the negotiations on the Family Reunification Directive, the government decided in 2001 to further restrict the application of the ‘effective family bond’ criterion. Since then, the family bond has been, in principle, assumed not to have been broken as long as the child has not lived in another family for five years or more. The minister explained this policy change with the argument that she had discovered that no other Member State applied this requirement. The Social Democrats and the Green Left were outraged that the government had, nevertheless, tried to ‘upload’ the requirement to the EU level, by proposing to insert it into the directive (Strik 2011: 76-77 and 100). The case law on Article 8 ECHR and on the Family Reunification Directive made the government abolish the requirement in September 2006 for regular migrants. For family members of refugees, however, the requirement was maintained, meaning that the family must have lived together in the country of origin at the time of departure. Since 2009, all applications have been assessed on the existence of this effective family bond. Political parties only started to pose questions to the minister about this practice after the Dutch division of the NGO, Defence for Children, published the increased number of rejections of applications for family reunification. After the Dutch Refugee Council criticized this practice, and the Dutch Ombudsman and the European Commission started inquiries, and the minister decided not to interrogate the family members of a refugee if they could show their family relationship through DNA. If they cannot, the identifying interviews will continue. However, in all cases the effective family bond is still required. The government justifies this requirement by stating that refugees enjoy more favourable rules and that the di-
rective, therefore, allows Member States to apply extra conditions. Until now, the parliament and national courts have accepted this argument.

Until 2001, refugees could reunite with their spouse and minor children without having to meet the income requirement. Only two conditions had to be fulfilled: the family members had to have the same nationality as the refugee and they had to apply for reunification within six months after the date the refugee status had been issued. After this six months timeframe, the refugee had to meet the income requirement. From April 2001, the time-limit was shortened to three months, according to the Secretary of State in order to accelerate the family reunification. This change hardly received any political attention, perhaps because it was only a small element within more extensive policy reform.

### 3.3 The legal position of admitted family members

#### 3.3.1 Integration requirements

From 1998 until 2007, the Civic Integration Newcomers Act (*Wet Inburgering Nieuwkomers*) applied, requiring newly arrived migrants from third countries (so-called ‘newcomers’) to take part in an integration programme that resulted in an examination. They did not need to attain a level of knowledge, taking part in the programme was sufficient. It was a duty of best intentions; if a migrant did not comply with this obligation, it had no consequences for his or her residence rights; although an administrative penalty could be imposed. However, these sanctions were hardly put into practice because most newcomers stopped attending the course because they found a job, and because it would constitute an administrative burden for the authorities (Brink, et al. 2002: 156).

In 2007, this Act was replaced by the Civic Integration Act (*Wet Inburgering*). Not only ‘newcomers’ but also settled migrants who had come to the Netherlands before 2007 were obliged to pass an integration examination. Furthermore, the duty of best intentions was replaced by a duty to achieve a given goal, namely to pass an examination. The language level of the examination was A2 and it had to be passed within three and a half years after arrival to the Netherlands. Not complying with this obligation still had no consequences for residence rights; only an administrative penalty could be imposed. By choosing level A2, the government knowingly accepted that a significant proportion of migrants would be excluded from permanent residence or naturalization since practice before the introduction of the Act had demonstrated that many would not be able to acquire this level (Van Oers 2013: 49).

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109 Article 6 and 7 Civic Integration Newcomers Act.
110 Article 18 Civic Integration Newcomers Act.
111 Article 21 Civic Integration Act.
In the atmosphere of crisis and fear after the murder on Theo Van Gogh in 2004, the Minister of Integration Verdonk (VVD) had managed to have her proposal for a new Integration Act adopted with relative ease at the end of 2005 (Van Oers 2013: 45). The Act introduced an integration obligation because it was feared that society would be threatened if large parts of the population would not participate actively in Dutch society. The government also referred to the European framework on immigration and integration as a justification, stressing the importance of knowledge of language and society and neglecting to acknowledge that the framework also stressed that integration was a two-way process, and the ‘near-equality’ of TCNs as compared to Union citizens (Van Oers 2013:46). The original proposal had also contained an integration obligation for naturalized Dutch nationals, but this was withdrawn after the Council of State pointed out that this was racially discriminatory.\(^ {112}\) After this, the discussion focused on the way the Act would be implemented and the required language level. The content of the examination, and the financial obligations imposed on migrants were hardly debated, but caused many problems in practice. The number of migrants starting courses dropped by one-third immediately after the Act came into force (Groenendijk 2012: 337). After the responsibility for the courses was shifted to the municipalities again, the number of course participants increased (Significant 2010: 21).

Since its introduction in 2007, the Integration Act has been amended seven times (Groenendijk 2012: 36). The government of the CDA and VVD, supported by the PVV, decided to reduce the integration budget to zero starting 2014. In 2011, the Dutch government decided to leave the organization of integration courses to the private market, starting 1 January 2013. The personal scope of the Act is limited to those family migrants and asylum seekers who migrated after 1 January 2013. Migrants have to pay for the courses themselves, but can take a loan of €5,000; refugees and their family members are granted the financial means to take a course (see also para. 2.5.4.\(^ {113}\) The formal argument for the amendment was that the government wanted to strengthen the responsibility of migrants for their own integration process. According to the government, its investment in integration education in previous years had solved the backlog. It would, therefore, be reasonable to shift the responsibility for integration to the migrants themselves.\(^ {114}\)

### 3.3.2 Grounds for withdrawal of the temporary residence permit

**Income**

Before the Aliens Act 2000, an application for renewal of the temporary residence permit could only be refused on the ground of public interest. The income requirement was no ground for refusal of renewal of the residence permit for spouses of Dutch nationals, permanent residence- and refugee status holders. The Aliens Act 2000 introduced the income requirement as grounds for refusal of extension or withdrawal of the temporary residence permit.

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\(^ {112}\) *Kamerstukken II*, 2005-2006, 30 308, no. 108.


\(^ {114}\) *Coalition agreement VVD-PvdA, Bruggen Slaan*, 29 October 2012, p. 31.
drawal of the residence permit (Article 18 section 1 sub d Vw2000). No specific arguments were put forward for this introduction, merely the general argument of synchronizing as much as possible refusal and extension or withdrawal grounds for the residence permit.\textsuperscript{115}

In October 2007, the Secretary of State for Alien Affairs (PvdA) sent a letter to the Second Chamber, stating that withdrawal or non-renewal of the residence permit because of insufficient income was in violation of Article 8 ECHR and would only be executed where the migrant involved was receiving social welfare benefits.\textsuperscript{116} This would not apply in the case of renewal of the (temporary) independent permit after family break-up (see below para. 3.3.3).\textsuperscript{117} The Rutte I Cabinet, however, announced that it would withdraw the temporary permit as a rule, if the income criterion was no longer met, and would only refrain from withdrawal in exceptional circumstances. This practice would also be applied to the application for a permanent residence permit. For these purposes, the IND and municipalities would intensify their cooperation.\textsuperscript{118}

According to the Aliens Circular, the IND has to weigh individual interests against state interests within the context of Article 8 ECHR, if the income requirement is no longer met. However, if someone has lost his or her job due to his or her behaviour (e.g. instant dismissal offhand or resignation), or is on social welfare, the renewal of the residence permit can be refused or the permit can be withdrawn.\textsuperscript{119}

Decisions to withdraw because the family is on welfare are taken regularly and have been approved by the court, even if there are minor children (see further chapter 5).\textsuperscript{120} The new VVD and PvdA Cabinet (Rutte II) announced in its coalition agreement of October 2012 the intention to withdraw the residence permit of migrants if the income requirement is not met during the first seven years of residence.\textsuperscript{121}

\section*{Integration}

All family migrants have to pass the integration test within three years of arrival, instead of the former three and a half years.\textsuperscript{122} If they fail to do so, the residence permit can be withdrawn.\textsuperscript{123} This amendment was based on the coalition agreement of the Rutte I Cabinet (VVD and CDA, supported by the PVV),\textsuperscript{124} and was accepted by the

\begin{thebibliography}{99}
\bibitem{116} Kamerstukken II, 2007-2008, 29 861, no. 573, no. 21.
\bibitem{117} Until 1 October 2012 this independent 'voortgezet verblijf' could be applied for after three years of marriage or relationship in the Netherlands or earlier in cases of domestic violence; since then this period has been extended to five years of marriage, see further para.3.3.3).
\bibitem{119} Aliens Circular 2000, paragraph B/8.5.2.
\bibitem{120} Information and exemplary cases provided by lawyer Halil Dogan.
\bibitem{121} Coalition agreement VVD-PvdA, \textit{Bruggen slaan}, 29 October 2012.
\bibitem{122} Kamerstukken II, 2011-2012, 33 086, no. 3: 8.
\bibitem{123} Kamerstukken II, 2011-2012, 33 086, no. 3: 12.
\end{thebibliography}
Senate in September 2012. At that time, the Rutte I Cabinet had already stepped down and as a result of the new elections they no longer had a majority in the Second Chamber (together with PVV), but it still held its majority in the Senate with the support of the orthodox Calvinists (SGP). However, we have to assume that since the European Commission found refusal of admittance solely on grounds of not meeting the integration requirement unacceptable, it will certainly do so if there is withdrawal of a residence permit on these grounds (see the Imran case in chapter 5). During the debate in the Senate, the Minister of Immigration, Integration and Asylum admitted that European rules would make it very difficult to apply this ground for withdrawal to family members.\textsuperscript{125}

\textbf{Public order}

Over the years, it has become easier to expel family members on public order grounds. The so-called sliding scale (which sets limits for expulsion on the basis of the duration of residence and the length of the conviction) was made stricter in 2005, 2009 and 2010.\textsuperscript{126} In June 2011, the new cabinet decided to once again make the criteria stricter. The ACVZ expressed serious doubts about the proportionality and legitimacy of the proposal, and pointed out that it would increase the difference between treatment of TCNs on the one hand, and Dutch and EU citizens, on the other hand. The ACVZ recommended the exclusion of migrants to whom the Family Reunification Directive or the Long-term Residents Directive applied from the applicability of the 'sliding scale' (\textit{ACVZ} 2011), and that they should be treated according to the public order criteria for Union citizens. The cabinet rejected these arguments and on 6 February 2012 presented the new restrictions, effective from 1 July 2012.\textsuperscript{127}

\textbf{3.3.3 The possibilities of and conditions for permanent or independent residence rights}

Since the 1980s, the legal position of migrant women after the break-up of their relationship has been a recurring issue for debate. NGOs for migrant women have lobbied for the introduction of an independent residence permit. Although they have not attained this goal, they have managed to obtain a significant improvement in the legal position of migrant women, first with the possibility to acquire independent residence status after three years of marriage and one year of residence in the Netherlands, and later with the possibility to acquire residence status even within three years of the break-up, in cases of domestic violence (\textit{Bonjour} 2009: 253 ff). The requirement for having an income within one year after the independent residence permit was obtained was abolished in 2001 after it turned out that this posed a problem for migrant women. At the same time, however, the required residence period was raised from one year to three years.\textsuperscript{128} Also from 2001, the death of the sponsor within

\begin{thebibliography}{99}
\bibitem{125} \textit{Handelingen I}, 11 September 2012, 2012-2013, no. 38 item 7, p. 36.
\bibitem{126} \textit{Kamerstukken II}, 2009-2010, 19 637, no. 1306; 2010: amendments of Article 3.86, 3.95(3) and 6.6 of the Aliens Decree 2000, \textit{Staatsblad} 2010, no. 307.
\bibitem{127} \textit{Staatscourant} 28 June 2012, no. 13324.
\bibitem{128} \textit{Kamerstukken II}, 1999-2000, 27 111, no. 1, p. 11.
\end{thebibliography}
three years of marriage no longer results in expulsion. Bonjour has pointed out that the improvement in the legal position of dependent family members was based on rather stereotypical and orientalist images of migrant women as being oppressed, vulnerable to violence etc., the same images that underlie many of the restrictive measures that we discussed above (Bonjour 2009: 153). Against this background, it is remarkable that the required residence period for an independent residence permit has been raised from three to five years, starting on 1 October 2012. The first attempt to extend the period after which an independent residence permit could be applied for from three to five years occurred in 2005 and must be understood against the background of limiting migrants’ access to social security benefits. The government had promised to look into the possibilities to limit migrants’ access to social security after the debate in the Second Chamber on the report of the Blok Commission on the ‘failed’ integration of migrants. Aware that such an extension could hinder the policy of emancipation and integration, the Secretary of State for Social Affairs proposed to make exceptions, e.g. for those ‘actively integrating’ (actieve inburgeraars). The left-wing parties, GreenLeft, PvdA and SP, criticized the plans, arguing that it would hinder emancipation and integration. In a later joint letter from the Secretary of State and the Minister of Immigration and Integration Verdonk (VVD), the government announced that it would not proceed with these plans, because the choice of a three-year period had been informed by mediation of the interests of prevention of fraud and emancipation of migrant women.

Seven years later, in 2012, the extension from three to five years was introduced without much ado both in parliament and the public debate. This change had been announced in 2010 as part of the coalition agreement of the Rutte I Cabinet (VVD-CDA, supported by PVV). At the time of the introduction of these restrictions, the majority of the newly elected Second Chamber opposed this measure. The Social Democrats, however, who were forming a new government with VVD, refused to vote against it. In the coalition agreement of the VVD and PvdA the measure was not withdrawn, as it did with the abolishment of residence on grounds of unregistered partnership (see para. 3.5 below). The government stated that the aim was to prevent migrants from becoming a burden on the social welfare system and to prevent fraudulent marriages, although the Minister for Immigration, Integration and Asylum admitted that he had no idea about the number of fraudulent marriages. As we have already seen, since 1 January 2010 migrants have had to pass an integration examination in order to acquire a permanent residence permit. Migrant women, who obtain an independent residence permit after the break-up of their relationship because of domestic violence, are exempted from this integration obligation.

129 Article 3.51 (1)(a) Aliens Decree.
132 Kamerstukken II, 2011-2012, 32 175, no. 15: 3.
133 Coalition agreement VVD-CDA, Vrijheid en Verantwoordelijkheid, 30 September 2010, p. 22.
3.4 Dutch nationals and the Belgium route

For a long time, Dutch sponsors with a third country national spouse had a more favourable position than third country national sponsors. This changed with the introduction of more restrictive requirements in the 1990s. With the introduction of the income requirement in 1993, the Second Chamber discussed for the first time the problem of so-called ‘reverse discrimination’: Dutch sponsors had to meet the strict income requirement, while Union citizens with a third country national spouse in the Netherlands did not. For the first time, the tension between the wish to treat EU citizens and Dutch citizens, on the one hand, and TCNs and Dutch citizens, on the other hand, on the same par as much as possible became apparent. According to the VVD, Dutch nationals always had a right to live in the Netherlands, since their legal position was fundamentally different from that of third country nationals. According to the government however, the issue was not whether one had a right to live in the Netherlands, but whether one had to choose a partner from abroad, stating that ‘everyone was free to find a partner on the Dutch marriage market, without any restrictions’ (De Hart 2003: 114). In several discussions, the Dutch government has justified the reverse discrimination of Dutch nationals in comparison to Union citizens with reference to the 1982 verdict of the European Court in *Justice Morson and Jhanjan* (C-35/82 and 36/82). Since the coming into force of the Family Reunification Directive, the issue has become even more pressing as TCNs can invoke the directive, while Dutch citizens cannot. The restrictive measures of 2004 and after were based on the perception of Dutch citizens with a migration background as being involved in forced marriages, failing in the upbringing of children and a weaker labour market position (Walter 2008:7) and of Dutch citizens without a migration background on fraudulent marriages (Walter 2008: 41, Bonjour & De Hart 20013). It is for the same reasons that the Dutch government prevented the introduction of an article in the directive that would guarantee similar rights for EU citizens and national citizens with regard to family reunification.

In the 2000s, a discussion emerged about Dutch nationals using the so-called EU or Belgium route to acquire the same rights as EU citizens with regard to family reunification. A Dutch national who moves to another Member State can bring a non-EU partner into the country under the more liberal conditions of EU law on the free movement of persons. These advantageous family reunification rights are retained upon return to the Netherlands.

Minister Verdonk of the Balkenende II government claimed that a study had demonstrated that a considerable number of Dutchmen moving to Belgium, based on name and birthplace, had turned out to be of non-Dutch descent. Many of these marriages were assumed to be fraudulent. However, in 2009, the Deputy Minister concluded that research (Regioplan 2009) did not confirm this claim and that most of these marriages were not fraudulent. Fraudulent marriages could occur, however, according to the government, among EU citizens. As a result of these debates, controls on fraudulent marriages, in practice, seemed to focus on EU citizens with a third country national partner. Fraudulent marriage was now thought to be aimed at obtaining not just residence, but also the status of an EU citizen (Bonjour & de Hart 2013). In its response to the European Commission’s Green Paper, the Dutch go-
ernment proposed that the use of the EU route should be limited by making the Family Reunification Directive applicable to admittance into the European Union in all cases, while the Union Citizens Directive should apply only after admittance. In this way, the reverse discrimination of Dutch nationals could be ended, the government stated.\(^{134}\)

### 3.5 Other developments

Although the government of the VVD and CDA, supported by PVV fell in April 2012, it managed to introduce some of the restrictive measures it had announced in its coalition agreement, through an amendment to the Aliens Decree, which came into force on 1 October 2012.\(^{135}\) Although the new Chamber that was installed after the general election of 12 September opposed the measures, this did not prevent their introduction. With these measures the government used the room left by the directive to make the family migration policy more restrictive. The Minister for Immigration, Integration and Asylum also referred to other EU Member States where these measures are common practice. The minister said that his purpose was not to bring the numbers down, but to end ‘the chain of migrants without any prospect, who did not adjust themselves at all’.\(^{136}\) The amendment contained four measures. First, family migration was restricted to the nuclear family to which only the spouse or registered partner and minor children belong.\(^{137}\) Adult children or parents who fall under the current system of extended family reunification are excluded.

Secondly, the form of the relationship was restricted to marriage or a registered partnership, verified by a marriage or partnership certificate. This ended the long-standing Dutch policy of accepting non-marital relationships of both hetero and same-sex couples since 1975, although the Dutch government had previously lobbied for the insertion into the Family Reunification Directive of an obligation to admit unmarried partners. After criticism that many homosexual and interreligious couples would not be able to marry or to register the partnership in the country of origin, a visa in order to marry in the Netherlands was introduced, which will be transferred into a temporary residence permit after arrival in order to be able to marry or to register the partnership in the Netherlands.\(^{138}\) The Minister pointed to the case law of the ECHR that allows different treatment of married and unmarried couples. An important argument for abolishing the permit for living together was the prevention of ‘fraudulent relationships’, again without providing any reliable statistics. The measure has been typified by an NGO as ‘Minister introduces forced marriage’.\(^{139}\)

\(^{135}\) *Staatsblad* 2012, p.148.  
\(^{136}\) *Kamerstukken II*, 2011-2012, 32 175, no. 36, p. 11.  
\(^{137}\) *Kamerstukken II*, 2011-2012, 32 175, no. 21: 1.  
\(^{138}\) *Kamerstukken II*, 2011-2012, 32 175, no. 19.  
\(^{139}\) Website Stichting Buitenlandse Partner, last visited 27 January 2013.
Third, a waiting period of one year’s legal residence of the sponsor is required before family reunification can be applied. Turkish nationals are exempted from this new requirement, because of the Association Agreement. This measure has met with criticism. Experts believe that the waiting period results in suspension of integration (De Hart et al. 2010: 445). However, as we have seen, most sponsors who apply for family reunification are Dutch nationals, so this measure will probably have limited effect.

The fourth measure was the extension of the time-frame for an independent residence permit from three to five years, which was already discussed in para. 3.3.3.

Finally, in the Modern Migration Policy Act, which has not yet come into force, the position of the sponsor is both strengthened and restricted.\(^{140}\) The sponsor must comply with the information and administration obligation, which means that he or she must inform the IND about all changes relevant to the residence rights of the migrant (e.g. if the relationship has broken down or if the income requirement is no longer fulfilled), and keep relevant information and documents for five years after the sponsorship ends. Furthermore, the Immigration and Naturalization Service (IND) can hold the (former) sponsor liable for the expulsion costs for the migrant (transport costs within the Netherlands, cost for travel documents and flight ticket), if the migrant remains irregularly in the Netherlands after the sponsorship has ended. If the sponsor violates these obligations, he or she may first get a warning notice and then receive a fine. Once more, fraudulent marriages and relationships were the main arguments for introducing these measures.

The new cabinet of the VVD and PvdA that was installed in October 2012 has taken a similar approach to family reunification as compared to its predecessor. The new government not only announced that it would take over many of the measures proposed by the former government, but also new restrictions, such as a stricter pre-entry test and stricter inland integration requirements. The government also announced that it would keep up its efforts to lobby in Europe for revision of the Family Reunification Directive, especially to allow for a higher income and age requirement.\(^{141}\) Nevertheless, one of the measures effective since 1 October 2012, the abolition of residence on grounds of cohabitation, will be withdrawn, and applications on this ground have already been granted.\(^{142}\)

### 3.6 Conclusion

Dutch family reunification policy has become more and more restrictive over the years, a development that started in the 1990s. During the negotiations on the Family Reunification Directive, the government made sure that there would be room for requirements such as the income and integration requirements. Once the Family Reunification Directive came into force, it used all available room left by the directive to

\(^{140}\) Due to ICT problems this Act has not come into force yet.

\(^{141}\) Coalition agreement VVD-PvdA, Bruggen slaan, p. 31.

\(^{142}\) Kamerstukken II, 2012-2013, 32175, no. 47.
introduce restrictive measures. In 2010, the Rutte I Cabinet decided to adapt its family reunification rules to the minimum standards of the directive. To this end, it applied all relevant optional clauses. Furthermore, it announced the formation of a European lobby with the intention of restricting the directive itself in many respects. These efforts have been taken up by the government of the VVD and PvdA installed in 2012. These national developments and strategies show that the Dutch government seeks to limit the directive, but that it apparently also perceives the directive as only a temporary frame of reference.

As demonstrated, integration has been an important argument for the introduction of several measures. Over the years, the definition of integration has changed, resulting in a policy that more and more sanctions and excludes those who are unwilling or unable to integrate. The catchword ‘own responsibility’ was central in this development. We have also seen that many of the measures have been grounded in stereotypical gendered images of Turkish and Moroccan migrant women as victims of oppression. Hence, arguments referring to a small number of family migrants have been used to introduce a policy applicable to all family migrants. This can work both ways: it may result in protective measures, such as the development of a more independent residence status during the 1980s, but recently it has predominantly resulted in the exclusion of the women who are said to be in need of protection or emancipation- and all others. In this context, it is remarkable that the interviewed policy makers stressed economy-related arguments more than integration arguments.

Although the effects of the policy have been monitored in several quantitative and qualitative studies, this has not resulted in a change in policy. The effects were either denied or ignored, or welcomed. Results of the evaluations were often used as an argument for new restrictive measures. Studies on the policy effects were almost always undertaken after and not before a policy was introduced. For example, the Dutch government has never been able to produce reliable statistics on the number of forced or fraudulent marriages, although they have often served as an argument for the introduction of restrictive measures. The advice of the Council of State and ACVZ was frequently rejected. It suggests that the subsequent governments indeed aimed to lower the number of family migrants and select ‘deserving’ and ‘undeserving’ migrants.
Chapter 4
Implementation of the right to family reunification:
administrative competence and practice

Besides the norms and criteria enshrined in legislation, the application of these norms also determines how easy or difficult it is to exercise the right to family reunification. This chapter, therefore, offers an overview of the practice: a description of the competent authorities, the procedure for applying for family reunification and the judicial system for reviewing family reunification decisions that is in place in the Netherlands.

4.1 The actors involved

Minister for Immigration, Integration and Asylum Policy
From 2010 to 19 October 2012, the Minister for Immigration, Integration and Asylum was responsible for developing and applying the family reunification legislation. This minister was attached to the Ministry of the Interior and Kingdom Relations. Under the Rutte II Cabinet, competence has been transferred to the Secretary of State of the Ministry of Security and Justice. Integration has been separated and assigned to the Ministry of Social Affairs and Employment. The daily powers of the Secretary of State of Security and Justice with regard to immigration and asylum have been delegated to the Immigration and Naturalization Service (IND), which takes decisions in individual cases on behalf of the Secretary of State.

The Secretary of State can give instructions to the mandated officials regarding the exercise of a mandated competence. The mandate does not exclude the competence of the Secretary of State to take decisions. Additionally, he or she can decide in an individual case to deviate from the rules, if applying these rules would lead to a situation of harshness. This power is known as the discretionary power of the Secretary of State.

Immigration and Naturalization Service
The IND implements the aliens policy, the Aliens Act and the Netherlands Nationality Act on behalf of the Secretary of State of Security and Justice and the Minister of Foreign Affairs. The organization comprises 3,000 employees, distributed over nine desks, three application centres for asylum seekers (one at Schiphol airport and two along the land borders) and several offices. The IND is responsible for all decisions on applications for admission, permanent or independent residence rights and

144 Family members of the beneficiaries of international protection who arrive in the Netherlands with an MVV are taken to one of the application centres for the granting of a dependent asylum status (Article 29 (1) e and f).
Dutch citizenship. The Secretary of State of Security and Justice is responsible for the way in which the IND treats applicants and the decisions it takes. Thus, the application of the admission procedure is very much centralized, and has become more centralized in the last 15 years. Previously, local officials of the Aliens Police had an advisory role, which offered them some margin of manoeuvre in individual cases. According to some of the lawyers interviewed for this report, they benefitted from this local margin because it enabled them to explain the individual circumstances of a case in more detail and to get information on the processing of the application.

Since the end of 2010, the IND has also been responsible for the implementation of the aliens and naturalization policy on Bonaire, Saint Eustatius and Saba. The IND telephone information line is available for general information on the Aliens Act or the Netherlands Nationality Act, or information on the status of an application.

There is no external independent supervision of the performance of the IND. The Central Complaints Registration Office, which is part of the IND, registers all complaints concerning the IND and monitors the handling of complaints. If a complaint procedure has been exhausted and a client is dissatisfied with the way he or she has been treated by the IND, he or she can turn to the National Ombudsman. In 2011, the Ombudsman received 442 complaints about the IND, which is an increase of 19.2 per cent compared to 2010.

Together with the Royal Netherlands Marechaussee, the Aliens Police and the Repatriation and Departure Service, the IND is also responsible for border control, supervision of the legal residence of aliens and the removal of irregular aliens and aliens who have exhausted all legal means. The return policy is supervised by the independent and external ‘Supervisory Commission on Expulsions’.

Other actors and their tasks

• The Ministry of Foreign Affairs, its embassies and consulates are responsible for handling and deciding on applications for MVVs (long-term visas) and short-term visas, making decisions, authenticating foreign documents and administering the integration test abroad. According to a new Act, the date of entry into force of which is not yet known, the Minister of Immigration, Integration and Asylum will become responsible for deciding on applications for an MVV.
• The tasks of the Royal Netherlands Marechaussee are border control, examining the authenticity of travel documents and the registration of personal data at Schiphol.
• The Aliens Police is responsible for the registration of personal data and supervision of legal residence, the detention of illegal aliens, and the investigation of fraud committed by aliens.
• The Repatriation and Departure Service supervises the actual departure of aliens who are not entitled to stay in the Netherlands. There is an external independent supervision on returns procedures.
4.2 The admission procedure for family members of third country nationals and Dutch nationals

A family member has to apply for an MVV for family reunification at the Dutch embassy or consulate in his or her country of origin or country of permanent residence. This long-term visa is only required if the TCN is not exempted on the basis of his or her nationality. The visa enables him or her to travel into the Netherlands, but it will only be granted when all requirements for family reunification have been met. On behalf of the Ministry of Foreign Affairs, the IND decides on the application. If the decision is positive, the Dutch embassy or the consulate in the foreign national’s country of residence issues the MVV.

4.2.1 Procedural steps

Visa

The IND has to decide within three months on the application for an MVV. This period can be extended by another three months. If the MVV is granted, the family members have six months to collect the MVV and travel to the Netherlands. In the future, this period will be limited to three months, with the possibility of an extension of three months if the Dutch embassy is closed in that country or if there is no Dutch embassy at all. If the application is rejected, the reasons for the decision must be given and the family member can apply for a review by the IND. The IND has to decide on this application for a review within six weeks, or 12 if there is a hearing. The authorities are allowed to postpone a decision for another six weeks. Since 1 October 2012, applicants can give notice of default if the IND does not decide within the legal time-limits for an application or a review. If they have done so, the law prescribes that two weeks after this notice the IND must pay an administrative fine to the applicant for each day that it decides later than these two weeks. Since 1 October 2009, it has been possible for an applicant to ask the court to impose this fine. If the decision on a review is negative, the family member can lodge an appeal at the district court. This appeal must be lodged within four weeks. If the appeal is rejected, it is possible to lodge a higher appeal at the Administrative Jurisdiction Division of the Council of State.

Until 7 July 2012, the sponsor had the opportunity to request for an advice on the application at an IND desk in the Netherlands concerning a long-term visa for his or her family members for family reunification. If the advice was negative, the sponsor was not able to appeal against this decision. As a result of the entry into force of a new Act, which amends the visa procedure, this advice has been replaced by a decision against which the sponsor can submit an application for review or an appeal instead of the family member who still resides abroad during this procedure.

146 Staatsblad 2012, no. 258 and Staatsblad 2012, no. 309.
Residence permit

Once the family migrant is granted a long-term visa, he or she can travel to the Netherlands and must apply for a temporary residence permit at an IND office. According to the new Act on Modern Migration Policy (Wet Modern Migratiebeleid), the family member will be granted this residence permit automatically within two weeks after arrival with a valid MVV for family reunification (the date of entry depends on the time of introduction of a new ICT system). Currently, the IND has six months to decide whether to grant or reject the application. During that time the migrant resides lawfully in the Netherlands.\textsuperscript{147} If the application is rejected, the migrant or the sponsor has the possibility to request a review of that decision. If the decision on the review is negative, the migrant or the sponsor can lodge an appeal. If the appeal is rejected, it is possible to lodge a higher appeal at the Administrative Jurisdiction Division of the Council of State. The two appeal procedures imply different scrutiny. In the appeal, the court decides whether the decision made by the IND is justified or unjustified, while in the further appeal the Council of State determines if the procedure has been followed correctly and whether the court has applied the law correctly. The decision not to renew or to withdraw a residence permit of a family member residing in the Netherlands can also be subject to review or (higher) appeal.

The review procedure has suspensive effect, which means that the family member is allowed to await the reviewed decision in the Netherlands. Neither the appeal nor the higher appeal has suspensive effect. This means that the migrant may not await the decision in the Netherlands. If he or she wants to do so, a separate, provisional ruling must be requested.

Third country nationals have the right to legal aid, just like Dutch nationals and Union citizens. Depending on income, the migrant can ask for a contribution to the costs of legal aid by a lawyer. If his or her income is less than €24,500 per year, the migrant has to pay a contribution of €127 and the rest is paid by the Legal Aid Council (Raad voor Rechtsbijstand).

\textbf{4.2.2 Assessing the application}

When assessing the application, the IND applies the requirements strictly. This means that if all the requirements are not completely fulfilled the application will be rejected. In 2008, the European Commission observed this Dutch practice regarding all requirements: integration, income, an MVV, age-limit and three-month time-limit for family members of refugees, and the Commission concluded that this method of decision making was not in compliance with the Family Reunification Directive, as Articles 5(5) and 17 oblige Member States to take into account individual interests and circumstances.\textsuperscript{148}

\textsuperscript{147} Article 8 (f) Aliens Decree.
In Dutch law, there is no general legal provision for an obligatory assessment of the circumstances mentioned in Articles 5(5) and 17 of the Directive when taking a decision on the right to family reunification. Only Articles 3.77(4) and 3.86 (9) Alien Decree oblige the IND to take into account the nature and solidity of the family relationship, the duration of the stay of the family member and the existence of family, cultural or social ties with the country of origin, when considering whether to refuse to renew or to withdraw a residence permit on public order or national security grounds. In paragraph B2/10 Aliens Circular, guidelines on how to interpret the jurisprudence on Article 8 ECHR are laid down. According to the explanation on the implementing Decree of the Family Reunification Directive, the government is of the opinion that the UN Convention on the Rights of the Child does not create obligations additional to Article 8 ECHR.140

The strict application of the pre-entry test has also been criticized by the Dutch Ombudsman. In 2011, he concluded that the hardship clause had never been applied during the five years the Integration Act Abroad had been implemented. The Ombudsman advised weighing all individual interests and circumstances before rejecting an application, and making this assessment visible in the decision.150 The minister objected to this conclusion, which he interpreted as a misunderstanding because of unclear registration of these positive decisions. According to the minister, the hardship clause had been applied in five cases since March 2006. Furthermore, he mentioned that since the introduction of stricter integration requirements as of 1 April 2011, criteria for the application of the hardship clause had been laid down in the Aliens Decree.151 The reason for the investigation by the Ombudsman was the rejection of an MVV for an Afghan illiterate mother, who had seven children in the Netherlands. It was only after the court had requested a preliminary ruling by the ECJ on this case and the European Commission had taken the position that denying admission only because of failing the pre-entry test was a violation of the Family Reunification Directive, that the government applied the hardship clause to this case. As a consequence, the CJEU did not rule on the preliminary questions (see chapter 5).

4.2.3 Verification of the family relation, fraudulent marriages

Where one or both spouses or registered partners hold a nationality other than Dutch or another EU nationality, the municipal official of the Registry of Births, Deaths and Marriages can only conclude or register a marriage if a declaration by a superintendent of police is submitted. This declaration has to provide information concerning the legal status of the migrant, as well as a recommendation from the superintendent to the municipal official as to whether or not he or she should conclude or register the marriage. A negative recommendation by the superintendent needs to be justified and accompanied by a completed questionnaire with possible observations by the

140 Staatsblad 2004 no. 496, p. 15.
151 Letter of the Minister of Interior and Kingdom Relations to the chairperson of the Second Chamber, concerning a reaction to the report of the Ombudsman, 31 August 2011, no. DGWI/I&I 2011051824.
superintendent that can indicate that a marriage/partnership is fraudulent. The questionnaire contains so-called ‘indicative criteria’ regarding residence and other observations (for instance that the partners did not seem to know each other), that may indicate that the marriage is fraudulent. The judgment of whether a marriage is fraudulent always needs to be based on more than one indicator. The sole fact that there is a large age difference between the spouses, for example, is not enough to draw the conclusion that the marriage is fraudulent. In practice, however, such characteristics or a specific or unusual combination of nationalities (e.g. EU nationals with Egyptians) could result in the suspicion that the marriage is fraudulent (Bonjour & De Hart 2013).

If the municipal official intends to refuse to conclude a marriage or to register a marriage concluded abroad, he or she informs the partners and offers them the opportunity to rebut his or her presumption. If the official is not convinced, he or she can decide to refuse conclusion or registration, of whom the superintendent will be informed via the IND. The partner who requested the conclusion or registration can appeal the refusal via a civil procedure. Besides the official of the municipality, the public prosecutor also has the opportunity to stop the conclusion or registration on grounds of public order. In this case, there is also a right to appeal.

Despite this detailed procedure on the verification of a marriage, in practice the municipal official seldom refuses to conclude a marriage on suspicion of its being fraudulent. An evaluation study demonstrated that in the first four years after introduction of the Fraudulent Marriage Prevention Act, only 69 marriages were refused. Couples often appealed such decisions successfully, because judges had to follow stricter norms for proving a fraudulent marriage than civil registrars and immigration officers (Fonk et al. 1998). A second evaluation in 2004 again confirmed these low numbers; less than one per cent of marriages was refused, around 40 per year (see table 4.1). These results are confirmed by the EMN study on fraudulent marriages in the EU. Researchers of this study concluded that whilst the perception amongst policymakers, and the media indicated that misuse of the right to family reunification through fraudulent marriages might be a widespread phenomenon, there was no evidence to confirm this (EMN 2012).

Nevertheless, the perception of large numbers of fraudulent marriages persists and the IND seems to have taken up the job of detecting them, with extensive questionnaires on the relationships, and separate interviews with partners. Both the former and the new government have made detection of fraudulent marriages a priority, with the latter announcing stricter control practices in the context of emancipation and equal treatment.152

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152 See Coalition agreement VVD-PvdA, Bruggen Slaan, October 2012.
### Table 4.1

<table>
<thead>
<tr>
<th>Year</th>
<th>Refusals</th>
<th>Total marriages/registration of marriages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>41</td>
<td>4,763</td>
</tr>
<tr>
<td>2000</td>
<td>37</td>
<td>4,757</td>
</tr>
<tr>
<td>2001</td>
<td>36</td>
<td>4,660</td>
</tr>
<tr>
<td>2002</td>
<td>39</td>
<td>5,203</td>
</tr>
<tr>
<td>2003</td>
<td>37</td>
<td>5,195</td>
</tr>
<tr>
<td>Total</td>
<td>190 (0.77%)</td>
<td>24,578</td>
</tr>
</tbody>
</table>


### 4.4 Family reunification with Union citizens

Although the Dutch government expressed its dissatisfaction with the CJEU decision in the *Metock* case (see chapter 5), it has complied with this case law by admitting TCNs if they are a family member of a Union citizen, without requiring that they have already resided legally in another Member State. This case law had sharpened the political debate on the so-called ‘Europe route’, implying that Dutch nationals moved to a neighbouring country in order to reunite with their TCN family members on the basis of Directive 2004/38 (see further chapter 3).

A number of political parties expressed their impression that many naturalized Dutch citizens with a Turkish or Moroccan background moved to the Belgian city of Anvers temporarily for their reunification, in order to avoid the Dutch restrictions on family reunification. As we have seen in chapter 3, this turned out not to be a widespread practice (Regioplan 2009b). However, the government decided to introduce a number of measures to prevent and combat fraudulent marriages and possible abuse of the rules on free movement.\textsuperscript{153} With these measures, the government targeted two different groups. First, Dutch nationals who exercised their right to freedom of movement with the objective of avoiding the national admission requirements. It has to be mentioned that this use does not constitute a violation of Union law. Second, with regard to Union citizens from other Member States, the minister observed some specific indications of fraud and fraudulent relationships: a relatively large number of significant combinations of nationalities (as examples the minister mentioned Polish nationals with Egyptians, Bulgarian nationals with Turks), short duration of the relationship before the date of application and the number of other procedures before the application.\textsuperscript{154}

These measures are: intensive assessment of applications for family reunification from third country nationals with a Union citizen residing in the Netherlands; more requiring more evidence and stricter criteria for a durable relationship, meaning that

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\textsuperscript{153} *Kamerstukken II*, 2009-2010, 32 175 no. 6.

\textsuperscript{154} *Kamerstukken II*, 2009-2010, 32 175 no. 6: 4.
partners must have lived together for six months or have a common child; better registration; a new ICT system which provides insight into the history of the applicant and relationship with other applicants or permit holders, and automatic exchange between the civil administration and the IND systems; interviews with both partners in the case of a consular marriage (concluded at a foreign embassy in the Netherlands); and more exchange of information between other Member States, especially Belgium, Germany and Denmark.

According to the Dutch government, its efforts to get more attention at the Union level for the combat of fraud, resulted in the following paragraph in the Stockholm Programme, as adopted by the European Council on 11 December 2009:

‘The European Council (...) invites the Commission to monitor the implementation of these rules to avoid abuse and fraud; examine how best to exchange information, inter alia, on residence permits and documentation and how to assist Member States’ authorities to tackle abuse of this fundamental right effectively’.155

4.3 Family reunification with holders of an asylum-related residence permit

According to the Aliens Circular, the required family bond between applicants for family reunification and holders of an asylum-related residence permit can be proved in three ways: identification documents, DNA research or identifying research. The IND work instruction prescribes that in all cases two of these three proofs must be brought forward.

In practice, the IND starts with the identifying research, which not only assesses the biological family ties, but also the Dutch criterion for the ‘effective family bond’ (see para. 2.2.5). Until July 2012, family members with biological ties also had to prove the existence of an effective family bond. If this condition was fulfilled, a DNA test was offered if they could not prove their family membership with documents. Since July 2012, the authorities first require a DNA test from these family members. If the outcome is positive and there are no doubts about the existence of an ‘effective family bond’, the IND presumes that this bond exists. A DNA investigation will only take place if the family members have given a credible declaration for not being able to provide documentary evidence. If the family member is a refugee, the sponsor has to pay a part of the costs of the DNA research in advance. If the results are positive, the money will be returned.

In the case of family members without biological ties, the assessment still targets both identification and the existence of an ‘effective family bond’. This identifying research implies that family members are interviewed at the Dutch embassy in the country of origin, and their statements are compared with the information the spon-

155 Kamerstukken II, 2009-2010, 32 175 no. 6: 7.
sor had provided during the asylum procedure in the Netherlands. The children are interviewed separately, and their statements are also compared in order to assess their consistency and credibility. According to observations by a lawyer and the Dutch division of Defence for Children, who visited the Dutch embassy in Kenya, the age and vulnerable position of children are not taken into account. Interrogations of very young children take place, they are not fully prepared, cannot be accompanied and the interviews can last for many hours, without adequate breaks or food and beverage. Also, in the evaluation of the differences in statements, the age of the child is not taken into account. If the IND detects differences, it might conclude that there is no effective family bond.

4.5 Conclusion

Due to the strict application of the MVV requirement, TCNs who are obliged to travel to the Netherlands with a visa face a significant waiting period and, thus, separation from the family, than those exempted from the visa requirement. However, the administrative fines for not deciding within the legal time-limits will force the IND to pay due attention to timely decision making.

Over the course of the last ten years, the processing of the applications has been significantly centralized at the national level. Although this development can be beneficial to an adequate processing of the applications, it has made it more difficult for lawyers and the determining authority to communicate on a specific case. The limited discretion and public guidelines (Aliens Circular) for the determining authorities further equal treatment and legal certainty. In practice however, they also seem to constitute an obstacle for taking individual interests and circumstances into account. The strict applications of the requirements has led to criticism of the European Commission, as the Family Reunification Directive forces the Member States to take individual circumstances and interests more into account.\footnote{COM (2008) 610, p. 11.}

At the same time, however, more and more individual attention is paid to the verification of identity and family ties in order to tackle fraud. An attitude of mistrust has been developed as regards all target groups: family members of TCNs, refugees, Dutch nationals and Union citizens. These intensified controls have increased significantly for all target groups, specific characteristics are considered as indications of fraud. This leads to a suspicious approach to, for instance, (non-biological) children of refugees, returning Dutch nationals after reunification on the basis of Union law, or couples with a specific combination of nationalities or other characteristics which are not considered to constitute a ‘proper marriage’ (Bonjour & De Hart 2013).
Chapter 5
Case law

This chapter offers an overview of the way in which the Dutch government complies with the case law of the ECHR and the CJEU concerning the right to family reunification. Furthermore, the chapter shows in which way the national family reunification legislation has been formed by national jurisprudence. With this aim, the most important judicial decisions are described.

With regard to the main category of TCNs, the relevant case law on the main requirements is separated from case law on other issues. This overview is followed by paragraphs on refugees, Turkish nationals and Union citizens. As there are no relevant Dutch judgements on the requirements on age or housing available, we will these issues out of this chapter.

Due to the different aspects of the legal position of Dutch nationals, case law on this group Dutch nationals is divided into two paragraphs: para. 5.1 concerning TCNs and Dutch nationals, and para. 5.5 on specific aspects of Union law which might affect the right to family reunification of Dutch citizens. As Dutch citizens have to meet the same requirements as TCNs, the case law on family reunification for TCNs also affects Dutch citizens with TCN family members. There are differences, however: Dutch citizens are excluded from the personal scope of the Family Reunification Directive (Article 3 (2)). Most of the sponsors who apply for family reunification with a third country national have Dutch citizenship. The fact that a large number of applicants is not able to invoke this directive, affects the speed with which jurisprudence on the meaning of the directive is developing in the Netherlands. Until now, the question of whether a dual national (Dutch and third country national) is able to invoke the Family Reunification Directive, has not been referred to the Court of Justice of the European Union. As case law on the applicability of Union law to other dual nationals, such as Dutch/Turkish, can be relevant for this question, these judgments will also be highlighted. Another difference between TCNs and Dutch citizens is that in certain specific circumstances they might rely on EU citizenship or the Union Citizens Directive. Therefore, jurisprudence on the possible applicability of other parts of Union law (Directive 2004/38 and Article 20 TFEU -regarding Union citizenship) on Dutch citizens has been included.

5.1 Third country nationals and Dutch nationals

5.1.1 Main requirements

Income
In its evaluation on the application of the directive by the Member States, the Commission expressed its concerns about the Dutch income requirement. According to
the Commission, the level (120 per cent of the minimum wage applicable to employees of 23 years or older) as well as the sustainability criterion would cause obstacles, especially for young people, to exercise their right to family reunification. The statutory minimum wage of workers younger than 23 years is considerably lower and most of them do not yet have a working experience of three years. This critical comment probably influenced the assessment by the national judges: two months after this report, the Judicial Division of the Dutch Council of State requested a preliminary ruling on the income requirement and the distinction between family formation and family reunification. This resulted on 4 March 2010 in the Chakroun judgment (C-578/08). This case dealt with a Moroccan woman who wanted to reunite with her Moroccan husband in the Netherlands. At the time of the judgment, they had been married for 37 years, but the marriage had taken place two years after the sponsor came to the Netherlands and, therefore, the regime of family formation applied. At the time, the Netherlands required an income level of 120 per cent of the minimum wage in cases of family formation, whereas in cases of family reunification an income level of 100 per cent was required. The sponsor challenged this difference.

The Judicial Division of the Council of State asked two questions for preliminary ruling. First, the Judicial Division wanted to know whether the phrase ‘recourse to the social assistance system’ in Article 7 (1) (c) of the Family Reunification Directive allows Member States to not only take into account the social welfare that met general subsistence costs, but also the special assistance provided by municipalities, resulting in a higher income requirement. Secondly, the CJEU was asked whether a difference in income requirement is allowed, depending on whether a family relationship arose before or after the entry of the sponsor into the Member State.

The CJEU answered negatively to both questions. It made clear that the directive, in granting a subjective right to family reunification, and its objective of promoting family reunification, obliged Member States to interpret the permitted conditions very strictly. A more extensive application than necessary would affect the objective and, therefore, the principle of effectiveness. As the 100 per cent income level was considered to be sufficient in the case of family reunification, this level must also be assumed to be sufficient in the case of family formation. According to the court, the income requirement could only function as a frame of reference, as the individual circumstances must always be taken into account, even if not all requirements were fulfilled.

In reaction to the Chakroun judgment, the distinction between family reunification and family formation has been abolished; since then an income level of 100 per cent of the minimum wage has been required for both categories. According to the Minister of Justice, this amendment would be sufficient in order to comply with the judgment. He stated that the prohibition to apply all conditions without taking the

158 See section 2.2.1 for the difference the Dutch legislator has made between family reunification and family formation.
individual circumstances into account, was already reflected in the policy (Aliens Circular), especially in the exemptions. Thus, the minister refused to adapt the legislation or policy in this regard, despite the criticism by the European Commission on the rigid application of the conditions for family reunification in the Netherlands (see para. 4.2.2). Until now, the national judges have accepted a more or less automatic rejection of an application if the conditions are not completely met, without demanding a proper assessment of the individual interests and circumstances are assessed properly.

However, in February 2012, a district court did not accept the rejection of an application where the conditions were almost fulfilled. This concerned the criterion that the income should be sustainable. A few months before the Chakroun judgment, the Judicial Division of the Council of State had judged that the sustainability criteria were in compliance with Article 7(1)(c) of the directive, considering that defining the income and the social assistance system was left to the Member State. However, after the CJEU had made clear that these definitions were a matter of Union law, the District Court of Amsterdam ruled that the rejection of an application on the sole ground that during the last three years the income requirement had not been met every month (the income level was just below the required minimum level in a few months) was not in compliance with Article 7(1) (c) of the directive. In its judgment, the court explicitly referred to the Chakroun case. The government has appealed and the case is still pending at the Judicial Division of the Council of State.

Withdrawal/non-renewal for reasons of income

Jurisprudence on the income requirement is not only relevant for applications, but also for withdrawal or non-renewal of a residence permit. On 30 August 2012, the District Court of The Hague ruled that the withdrawal of the residence permit of the husband of a Dutch sponsor because the couple did not meet the income requirement, was justified as it did not constitute a breach of Article 8 ECHR. In this case, the sponsor had lost her job and received social benefits. Although the municipality had exempted her from the requirement to work, the IND found that she was obliged to make efforts to find another job in order to meet the income requirement. As she could not provide this evidence, the district court approved the withdrawal. Although the sponsor and her children had Dutch nationality, because they also had Moroccan nationality, the court saw no obstacle to her following her husband to Morocco. She also had the choice to stay in the Netherlands, look for a new job and try to reunite with her husband. The court did not take into account that the sponsor already had a new labour contract.

Pre-entry test

One year after the coming into force of the Integration Abroad Act, the District Court of Middelburg judged that the government was allowed to hold

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159 Kamerstukken II, 2009-2010, 32 175, no. 8.
160 District Court Amsterdam, 3 February 2012, AWB 11/19003.
fully responsible for preparing for the examination. According to the judge, the legislator had deliberately made this choice, thereby taking the possible obstacles into account.162 The judgment implied that the Eritrean applicant first had to learn English, in order to be able to use the preparation package, that had only been developed in a limited number of languages.

The claim that the requirement constitutes discrimination on the basis of nationality, because it only applied to certain nationalities, was also rejected by the courts.163 At the end of 2008, the Judicial Division of the Council of State judged that illiteracy was not a ground for exemption from the integration requirement, as according to the government, the examination should be eligible for illiterates as well.164 Although since then the integration requirement has been raised by the introduction of an additional reading test (as of 1 April 2011), this judgment has not been questioned.

Also in April 2011, the European Commission took the position that denying family reunification for the sole reason that the applicant had not passed the pre-entry test, was not in compliance with Article 7 (2) of the Family Reunification Directive. The Commission took this position in the Imran case, in which the Dutch District Court of Zwolle requested the CJEU to give a preliminary ruling.165 The underlying case concerned an Afghan illiterate mother who took the test at the Dutch embassy in Pakistan several times, but failed to pass it. Her husband and her eight children resided in the Netherlands. A week after the Commission had sent its position to the Dutch government, the mother was granted permission to reunite with her family, thus avoiding a judgment by the CJEU on the compatibility of the Dutch pre-entry test with the Directive on the Right to Family Reunification. Interestingly, the Commission emphasized that its position applied to all applications for family reunification. Thus, factors like education level, small children or closed embassies were not relevant: in all cases, not passing an integration test could not be the sole reason for denying family reunification, as Article 7 (2) of the directive and the effectiveness principle did not allow this. Article 7 (2) aimed to promote integration, but could not be used to undermine the objective of the directive of promoting family reunification.166

This opinion had an evident impact on at least one Dutch judgment. In November 2012, the District Court of Den Bosch fully endorsed the position of the Commission. According to this court, a request for a preliminary ruling wasn’t even necessary as the interpretation of the Commission was crystal clear.167

167 Rechtbank Den Bosch, 23 November 2012, AWB 12/9408.
5.2 Other issues

Fees
In 2010, the European Commission started an infringement proceeding before the CJEU about the high fees (€830) that the Netherlands required from TCNs for the EU residence permit for long-term residents. In the view of the Commission, these fees were disproportionate to the fees that EU citizens had to pay (€30). The Long-term residents Directive aims to approximate the legal status of TCNs to that of EU citizens. In its ruling of April 2012, the CJEU followed the Commission’s reasoning, although it did not compare the amount of the fee with the fee for Union citizens, but with the fee that Dutch citizens paid for their ID cards. As the fees for long-term residents were seven times higher, the court considered them ‘extraordinarily high’, and, therefore, not in compliance with the objective of the Long-term residents Directive.168 On 9 October 2012, the Judicial Division of the Council of State decided that the CJEU’s reasoning was also applicable to the fees for family reunification in relation to the Family Reunification Directive.169 This judgment has resulted in a significant lowering of the level of the fees for family reunification.170

The issue of high fees has also been criticized by the ECtHR. In January 2012, it judged in the case of G.R. that the requirement to pay high fees for an MVV for the purpose of family reunification and the rigid application of this requirement, even if the sponsor received social welfare benefits, was a violation of Article 13 ECHR. In this case, an Afghan national whose residence permit was withdrawn in 2004 on the basis of Article 1F Refugee Convention (war crimes), had applied for a residence permit on the ground of staying with his wife and children, who had already become naturalized. His wife, who only had social welfare benefits (€988.71 monthly), was not able to pay the fee (€830). Subsequently, the IND declared the application inadmissible, which was approved by the district court. The ECtHR judged that the applicant had an arguable claim under Article 8 ECHR (right to family life), and that the attitude of the minister was extremely formalistic and denied the applicant’s access to an effective remedy.171 In response to this judgment, the Minister for Immigration, Integration and Asylum decided to introduce a lower fee (€250) for applicants for an MVV or a residence permit for family reunification, if their only income was social welfare benefits. The minister added that this did not change anything in the income requirement.172

Effective family bond
Until 2006, the Dutch family reunification rules included the requirement proof of an ‘effective family bond’ between minor children and the parent (see also paras. 2.2.5 and 4.3). Up until 2002, such a bond was assumed to exist as long as the child had not become part of another household than that of the parent(s) residing in the

169 ABRvS 9 October 2012, 201008782/1/V1.
170 Kamerstukken I, 2012-2013, 31 549, no. K (see also para. 2.2.2).
172 Kamerstukken II, 2011-2012, 32 175, no. 28.
Netherlands. At what point a child could be assumed to have become part of another household depended to a large extent on the justification for the separation given by the parents. Although the period of the separation was important, the effective bond could be assumed to have remained intact if the parent still supported the child and if he or she had maintained effective custody over the child. In practice, proving this support appeared to be difficult. Where the separation had lasted longer than a year or two, the effective family bond was usually assumed to have been broken.

In the Sen case, the ECtHR reached the conclusion that by applying the criterion of ‘an effective bond’, the Netherlands had failed to strike a fair balance between the interests of the state and the applicants and, consequently, had violated Article 8 ECHR.173 The case concerned a couple wanting to reunite with their nine-year-old daughter, who lived with her aunt and uncle in Turkey. Until the age of three, she had been raised with her mother, who then had reunited with her husband in the Netherlands. The Dutch government argued that the girl had become a member of the family of the aunt and uncle, because the parents had not supported her financially, not intervened in her education and not demonstrated their intention to leave their daughter behind only temporarily. Preceding the ECtHR’s judgment in the Sen case, the Dutch government had announced its intention to modify its family reunification policies in the sense that, as long as parent and child had not been separated for longer than five years, the effective family bond between them would be assumed to be still intact. Once they had been separated for more than five years, however, family reunification would only be possible if the child had no one to look after him or her in the country of origin, or the parent had been unable to trace the child due to a situation of (civil) war in the country of origin.174

In response to parliamentary questions on the implications of the Sen judgment, the Dutch government replied that this case involved a very particular set of circumstances and was not of general significance to Dutch policy.175 The case law of the district courts was rather divergent in their interpretation of its implications.176

In the Tuquabo-Tekle case, separation between the mother and the daughter had exceeded five years.177 According to the Dutch authorities, the daughter had become part of the family of her grandmother, who had custody over her, and Mrs. Tuquabo-Tekle had not shown that she had been sufficiently involved in her upbringing. Unanimously, the ECtHR found the refusal of a residence permit to be contrary to Article 8. The court ruled that parents who leave their children behind cannot be assumed to

174 This policy change was implemented in 2002: ‘Tussentijds Bericht Vreemdelingencirculaire’ (TBV2002/4) Staatscourant 58:15 (2002).
175 Letter, dated July 8th 2002, from the Dutch Minister of Foreign Affairs addressed to the Chairman of the Permanent Committee on Foreign Affairs of the Dutch parliament (Second Chamber), concerning the Sen case (DJZ/IR-211/02).
177 Tuquabo-Tekle and others v. the Netherlands, 60665/00 [2005] ECHR 803 (1 December 2005).
have irrevocably decided that those children are to remain in the country of origin permanently and to have abandoned any idea of a future family reunion. The court pointed out that the length of the separation between Mrs. Tuquabo-Tekle and her daughter was not a result of her own choice, and that she had taken steps to be reunited as soon as she had acquired a residence right in Norway.

At the end of 2005, the Dutch district courts started receiving cases in which the plaintiff complained that the requirement for an ‘effective family bond’ and the reference period of five years were not compatible with Article 16(1) (b) of the Family Reunification Directive. In a number of judgments, the courts ruled on its incompatibility. The question of a real family relationship as mentioned in Article 16(1) (b) could only be answered after an individual factual assessment of all the relevant circumstances. The domestic policy provision stipulating that the family life ceased to exist after a separation of five years implied that applications were refused categorically, without making this individual assessment. According to the Court of Amsterdam, Article 16 (1) (b) of the directive did not give the Member States leeway to establish their own rules on what was to be considered a ‘real family relationship’. Another problem mentioned by several district courts was that, according to national rules, the family relationship had to pre-exist the sponsor’s coming to the Netherlands, whereas the directive did not require this (Article 2 (d) of the directive). The Judicial Division of the Council of State annulled all of the above-mentioned court judgments, ordering that the criterion of an effective family bond did not exclude the possibility of an individual assessment of the family relationship in cases where such long separations had occurred. Therefore, the conclusion was that there was no compatibility problem. In defiance of these judgments, the Court of Middelburg ruled that the national policy rule on the so called ‘reference period’ was incompatible with Article 16(1) (b) of the directive. Interestingly, no appeal was brought against this decision.

In a letter of 25 September 2006, the Minister of Alien Affairs and Integration abolished the policy rule that a real family relationship was deemed to have ceased to exist in cases of separation of parent and child for more than five years, as more connection needed to be made with Article 8ECHR. The Tuquabo-Tekle judgment was mentioned as the reason for abolition of the policy and not the Family Reunification Directive. However, during court hearings some representatives of the government expressed the thought that the abolition of the policy rule on the ‘period of reference’ was also caused by the directive and case law on the directive (Baldinger 2007: 290).

178 Judgments of the Court of Amsterdam of 16 November 2005 (JV 2006/28), the Court of Haarlem of 21 December 2005 (JV 2006/65), the Court of Middelburg of 14 March 2006 (JV 2006/177), the Court of Middelburg of 18 October 2006 (JV 2006/462 case note P. Boeles).


5.3 Family members of refugees

Despite the policy changes described above, the requirement of an effective family bond has been upheld in cases of family reunification by refugees or other holders of an asylum-related residence permit. Hence, in order to be exempted from the income requirement and to obtain a derivative asylum-related permit, the sponsor and family members still have to show that their family ties still exist. The Judicial Division of the Council of State has approved this practice, judging that the asylum status for family members does not fall within the scope of the Family Reunification Directive, and, therefore, doesn’t have to comply with its norms.\footnote{ABRvS, 12 maart 2008, LJN: BC7140, JV 2008/176; NAV 2008/19 case note Strik; RV 2008/24 case note Olivier.} According to the Judicial Division, the asylum status is more favourable than the minimum norms of the directive; it referred to Article 9(3) of the directive, which determines that the refugee status does not fall within its scope.\footnote{See also the case of 19 October 2010, JV 2010/471 case note Boeles, RV 2010, no. 22, case note Van Walsum.} The family members can only successfully invoke Article 8 ECHR if they apply for a regular residence permit.\footnote{ABRvS, 10 October 2012, case no. 201108774/1/V1.} On the other hand, the Judicial Division also ordered that the family bond cannot be considered as having ceased to exist on the sole ground that the children had lived with another family, as this can be a temporary practice, caused by the circumstances which compelled the sponsor to flee the country.\footnote{ABRvS, 10 October 2012, case no. 20112315/1/V1 [LJN: BY0146].}

The effective family bond is also considered to be absent if the spouses didn’t live together in their country of origin before the departure of the refugee, but instead, for instance, in a refugee camp in a third country. With regard to this latter example, the District Court of Roermond ruled that a Somali spouse could not reunite with her husband who was granted refugee status in the Netherlands, as the couple had met in a refugee camp in Kenya when they were young; they had married and lived together there, until the husband was deported to Somalia, from where he fled to the Netherlands. The court, expressing its dissatisfaction with its own ruling, explained that the case law of the Council of State did not leave it any room to take another decision.\footnote{Rechtbank Den Haag, zittingsplaats Roermond, AWB 11/17369, LJN: BU5818, r.o. 7.}

The Judicial Division of the Council of State leaves the government wide discretion to assess the existence of an effective family bond. After lawyers argued that these identifying assessments were improper, as the interests of the (young) children had not been taken into account (long interviews in inappropriate circumstances), the Judicial Division stated that it was not up to the court to judge these methods.\footnote{ABRvS, 10 October 2012, case no. 201200425/1/V1.} Nevertheless, the Council determined that the questions posed to the family members have to be relevant for the assessment of the family bond.\footnote{ABRvS, 27 July 2012, case no. 201100048/1/V2, JV 2012/393.}
5.4 Association rules EC-Turkey

Integration
On 8 June 2011, the District Court ’s-Gravenhage decided that the integration requirement for a permanent residence permit did not apply to Turkish nationals and their family members because the costs for the examination would violate the Association Agreement between the European Union and Turkey. According to the district court, the obligation for Turkish nationals to pass the integration examination violated the discrimination clause of Article 9 of the Association Agreement and Article 10 (1) of Decision 1/80, because Union citizens did not have to pass the integration examination either. The district court also referred to the CJEU judgment of April 2010 mentioned above.

In August 2011, the Dutch Central Appeals Tribunal (Centrale Raad van Beroep), referring to the case of Sabin (see below), judged that the integration requirement for admitted Turkish nationals and their family members negatively affected their legal position in the Netherlands and was not in compliance with the EU-Turkey Association Agreement. As a result, the integration requirement for Turkish nationals has been abolished. This means that passing the integration examination is no longer a condition for obtaining a permanent residence permit and that municipalities may no longer oblige Turkish nationals to participate in integration courses or impose penalties on those who do not participate. As the Integration Abroad Act is only applicable to migrants who are obliged to fulfil integration requirements after admission, in September 2011, the Minister for Integration announced that Turkish nationals were also exempted from the pre-entry test. Consequently, the pre-entry test does no longer apply to one of the largest target migrant groups in the Netherlands.

Other issues: fees
In 2009, the CJEU delivered a judgment on the fees for a permanent residence permit for Turkish nationals in the so-called Sabin case. The case dealt with a Turkish national whose application for renewal of his residence permit in order to live with his Dutch was refused because he had not paid the required fees. After he did so, his application was refused because the fees were not paid in due time. The Judicial Division of the Council of State asked the CJEU for a preliminary ruling, mainly wanting to know whether the standstill clause of Article 13 Decision 1/80 (and of Article 41 (1) Additional Protocol) allowed Member States to refuse to consider the application only because the fees had not been paid and whether the level of fees (€169) could be significantly higher than the fees charged for EU nationals (€30).

The CJEU decided that the introduction of fees for Turkish nationals was, in principle, in conformity with the standstill clause in Article 13 of Decision 1/80, but

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188 Rb ’s-Gravenhage, 8 June 2011, LJN: BQ7656.
190 CRvB, 16 August 2011, case nos. 10/5248, 10/5249, 10/6123, 10/6124 INBURG, JV 2011/416 case note K.M. de Vries [LJN: BR4959].
191 Kamerstukken II, 2011-2012, 31 143, no. 89.
not if it constituted a restriction. In this regard, the court decided that the fees charged to Turkish nationals were disproportionate in comparison with the fees required from EU nationals. Two months later, the Dutch legislator brought the fees for Turkish nationals down to the level for EU citizens.

In an infringement proceeding against the Netherlands from 2010, which builds on the Sahin case, the CJEU even went a step further, deciding that the standstill clause of Article 13 of Decision 1/80 also prohibits restrictions for Turkish nationals as regards substantive or procedural requirements for first admission (e.g. visa requirements). This means that Article 13 is not only applicable to persons who are already in the country, as was decided in the Sahin case, but also to persons who want to be admitted (See Schaap 2010: 288).

5.5 Union citizens

Verification of a relationship or marriage

Although the Dutch government uses the same methods verifying relationships or marriages involving Union citizens and marriages involving TCNs (see chapter 4), Union citizens are to a certain extent protected from these methods by the Union Citizens Directive. National courts increasingly take into account the CJEU case law. In 2011, several judgments of the Judicial Division of the Council of State made explicit reference to the 2009 Guidelines of the Commission on the application of that directive (COM(2009) 313), e.g. with regard to proof of a ‘durable relationship’ or how to ascertain whether a marriage qualified as fraudulent.

The Judicial Division of the Council of State established that the list of indicative criteria of a relationship the IND applied implied too restrictive a reading of the definition of a ‘durable relationship, duly attested’. According to the Council, the absence of a definition of a ‘durable relationship, duly attested’ left the Dutch authorities with a margin of appreciation. This, however, was not an open invitation to define it completely autonomously. Referring to the Commission’s 2009 guidelines on the implementation of Directive 2004/38/EC, the Judicial Division argued that reference to a minimum duration of the relationship could not be the only qualifying criterion to determine whether there was a ‘durable relationship, duly attested’. Ac-

193 Ibid., para.75.
194 Staatscourant 12 November 2009, nr. 17361.
According to the 2009 guidelines, any appropriate evidence could be submitted and had to be taken into account, such as a joint mortgage for shared accommodation. The Judicial Division also referred to consideration no 6 of the directive, which obliged Member States to assess the durable nature of the relationship in the light of the purpose of the directive, namely to ensure family unity.

The Judicial Division furthermore ruled that the state authorities had to substantiate suspicions that there was no ‘durable relationship, duly attested’ if evidence of a durable relationship had been presented by the applicant. Mere reference to lacking registration in the municipal administration (GBA) was insufficient. After these rulings, the policy rules were adapted in order to offer more possibilities for applicants to prove the durable nature of their relationship.

### 5.6 Dutch nationals and the applicability of Union law

In a number of cases, Dutch citizens have tried to invoke Union law in order to reunite with their third country national family members. This concerned Dutch children: their TCN parents do not have a right to residence because of the nationality of their children according to Dutch law, but since the Zambrano case, they have tried to claim this right on the basis of the implications of Union citizenship (Article 20 TFEU). Dutch citizens with dual nationality have also claimed to have a right under Union law: if they are also third country nationals, they have tried to invoke the Family Reunification Directive or the Association Treaty, if they also possess the nationality of another Member State, they try to invoke the Union Citizens Directive. Thirdly, there is some case law on Dutch citizens claiming the right to family reunification enshrined in Union Citizens Directive, because they say to have used their right to free movement. Finally, Dutch citizens sometimes faced problems claiming their right to family reunification on the basis of the Union Citizens Directive returning to the Netherlands after having lived in another Member State. Judgments on each of these four aspects of applicability of Union law will be described.

**Dutch children**

The CJEU judgments in Zambrano, McCarthy and Dereci have raised a number of questions and produced many national court decisions. On 7 March 2012, in an effort to draw some broad lines, the Judicial Division of the Council of State handed down two judgments in which the ‘genuine enjoyment test’ (can the Union citizen stay on EU territory while living with his family) should have resulted in the issuing of a residence permit and a long-term visa respectively. These cases have in common that there was only one (TCN) parent involved in the children’s care as one Dutch parent

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198 Afdeling Bestuursrechtspraak Raad van State, 6 September 2011, 201009139/1/V4, LJN: BS1678, JV 2011/429, cons. 2.4-2.4.3.

had passed away (long-term visa) and the other parent had left to an unknown destination (residence permit). The Judicial Division dismissed the state’s argument that the children could live with the paternal grandparents who were residents of the Netherlands without considering whether the grandparents were willing and capable of caring for the children. The test should entail whether the children would have to leave EU territory in order to live with their parent(s), not whether there might be a third party in the Member State of which the children were nationals who could care for them. It also found immaterial the fact that the children had limited ties with the Netherlands as they had spent all or most of their lives in Indonesia where they attended an international school and did not speak the language of that country. These judgments have limited the possibilities for the government to refer to other adults who can take care of Dutch children or to other countries that the children also have ties with.

At the same time, the Council of State has rejected claims that Article 20 TFEU obliges Member States to ensure that both parents can live in the Netherlands in order to enjoy family life with their Dutch children. If one of the parents is Dutch or resides legally in the Netherlands, the other parent does not have a right of residence on the basis of Dereci or Zambrano. Although the CJEU ruled in Zambrano that EU citizens could not be deprived from their right to stay in EU territory, which implies that TCN parents should be granted residence and the right to work in order to take care of their (small) EU children on EU territory, the Council of State concluded that this did not imply a right of residence for both parents. This did not change if this single parent in the Netherlands faced problems with raising the children, for instance because of medical or psychological problems. In these situations, this parent could request assistance from the relevant Dutch institutions. The government only needed to derogate from this principle if it was clear that the parent who resided legally in the Netherlands or was a Dutch citizen, was not in the factual situation to look after the children, for instance because he or she was in jail.

The District Court of Zwolle also applied this derogation in a case where the mother who took care for the Dutch children was to be expelled, after the father had threatened to kill the mother and children and had gone underground. The court rejected the Dutch position that this father was able to look after the children and decided that the mother should be granted the right to residence.

The District Court of Haarlem ruled in a case where the Dutch father suffered from leprosy and lived in a nursing home where no children could be housed, that the mother should be granted legal residence.

In July 2012, the Dutch government informed the Second Chamber that, according to the jurisprudence of the Judicial Division of the Council of State, it would admit the ‘second’ parent to the Netherlands if there was an objective obstacle.

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200 ABRvs, 7 March 2012, AWB 201011743/1/V1, 7 March 2012 LJN: BV8619; 6 August 2012, LJN: BX5044.
201 ABRvs, 10 July 2012, LJN: BX 1345.
203 Rechtbank ’s-Gravenhave, nevenzittingsplaats Haarlem, 5 June 2012, LJN: BW8078.
for the Dutch or legally residing parent to take care of the Dutch child in the Netherlands (for instance on medical grounds or because he or she had been deprived of his or her parental rights).\footnote{Kamerstukken II, 2011-2012, 19 637, no. 1561.}

\section*{Dual nationals}

Several partly contradictory judgments of the Judicial Division of the State Council dealt with the issue of dual nationality after an EU migrant acquired Dutch nationality by naturalization while retaining his or her original nationality. This case law determines whether or not a Dutch national, also holding a nationality of another EU Member State, can rely on the family reunification rules of Directive 2004/38.

In one case, the applicant had been born in the Netherlands and had never resided or worked in another Member State. At the time of her birth, she possessed Spanish nationality and she acquired Dutch citizenship later in her life. But she never moved to another Member State or exercised her right to free movement. The Judicial Division ruled that the Union Citizens Directive was not applicable.\footnote{ABRvS, 28 Oktober 2012, LJN: BU3406.}

In another case, the Portuguese applicant had exercised his right of free movement, but the minister argued that despite this, his naturalization as a Dutch citizen had put him in the same position as other Dutch nationals, who had never exercised their right to free movement. The Judicial Division ruled that there were no grounds for this assumption, given the Court's judgment in \textit{McCarthy}.\footnote{ABRvS, 2 November 2011, LJN: BU3411.}

There have been several judgments on the question of whether the Family Reunification Directive applies to Dutch nationals who have a second nationality of a third country. The Judicial Division decided that, according to the text of the directive, these people were excluded because of their Dutch nationality. The District Court of Roermond reasoned that it would not be logical if a migrants' position were to deteriorate upon naturalization. The District Court of Amsterdam, however, judged that application of the directive to those dual nationals would even be \textit{contra legem}, as it would violate Article 3 (3) of the directive, which explicitly excluded Union citizens, and, therefore, undermine the deliberate choice of the Member States to do so. According to this court, naturalization to Dutch citizenship resulted in an improved legal position in other areas, and it would not be appropriate to benefit from both nationalities. The District Court of Haarlem rejected the claim of a Dutch/Moroccan national that the CJEU judgment in \textit{Kavbeci and Inan}\footnote{These cases dealt with the application of Regulation 1/80 Turkish/Dutch nationals, 29 March 2012, C-7/10 and C-9/10.} implied that the Family Reunification Directive also applied to dual nationals. The court pointed out that a provision like Article 3 (3) of the directive, explicitly excluding Union citizens, was absent in Regulation 1/80, and was, therefore, not comparable.\footnote{Rechtbank Den Haag, nevenzittingsplaats Haarlem, 9 October 2012, AWB 12/16652.}
Free movement of workers

In 2011, a district court ruled that the fact that the sponsor during his (brief) stays in Germany received certain services, was not sufficient reason to invoke the (compared to the Dutch rules) more liberal rules for family reunification of Directive 2004/38 in order to reunite with his partner.\(^\text{209}\)

In another case, the minister had denied residence to the spouse of a Dutch worker (the sponsor) who lived in the Netherlands and worked in Antwerp.\(^\text{210}\) According to the minister, there was no situation where a sponsor moved to or stayed in another Member State under Article 3 of the Union Citizens Directive. The court disagreed, however. Referring to the Geven judgment, the court concluded that the right to free movement should not only be awarded to ‘permanent’ employees, but also to frontier workers who were real and genuine workers, as in this case. The argument by the minister that the sponsor could rely on the directive only in Belgium was inconsistent with the jurisprudence of the CJEU. The denial of residence in the Netherlands to his spouse implicated an unlawful restriction of the exercise of the sponsor’s right to free movement, at least as regards his choice of domicile.

These judgments make clear that only using services in another Member State is considered insufficient for a Dutch citizen to benefit from the more liberal rules of the Union Citizens Directive, but working in another Member State is sufficient ground. The attempts by the Dutch government to limit the scope of Union Citizens Directive in this sense, have failed.

Family members joining (returning) Dutch nationals

The Judicial Division of the Council of State handed down two decisions in which Dutch nationals had invoked the Union Citizens Directive as the correct legal source for a right of residence for their TCN family member.\(^\text{211}\) In both cases, the Judicial Division found in favour of the state, respectively that the directive was not applicable upon return from another Member State, as the stay abroad had only lasted two weeks (in the first case) and because the purpose of exercising free movement rights had been to investigate the career possibilities for the TCN family member (in the second case).

In October 2012, the Judicial Division requested a preliminary ruling.\(^\text{212}\) It asked the CJEU whether the rules on family reunification of the Union Citizens Directive were applicable to Union citizens who returned to their country of nationality, including their family members from a third country. If this question was confirmed, the Council wanted to know if there was a required minimum duration of the stay in

\(^{209}\) District Court Haarlem 26 April 2011, AWB 10/12844, 08/42013 [LJN: BQ5774].

\(^{210}\) Rechtbank Amsterdam, 28 June 2011, AWB 10/27914.

\(^{211}\) ABRvS, 30 December 2011, 201010287/1/V2, JV 2012/98 and idem, 29 February 2012, 2011006036/1/V2. Examples of cases which were found ‘unfounded’ are: ABRvS, 16 February 2012, 201103487/1/V4, idem, 13 February 2012, 201100234/1/V4, idem, 13 February 2012, 201108229/1/V4, and idem, 13 December 2012, 201012607/1/V4.

\(^{212}\) ABRvS 5 October 2012, LJN: BX9567.
another Member State, before the family members became entitled to residence on the basis of this directive. If yes, the Council wanted to know whether this requirement could also be fulfilled if the Union citizen only stayed there periodically. Furthermore, the Council wanted to know whether the entitlement to family reunification on the basis of the Union Citizens Directive declined if a certain period of time had passed between the return of the Union citizen and the application for family reunification. This request for a preliminary ruling implies that the Judicial Division has some doubts about its former decisions or at least wants to know to what extent the free movement rules remain applicable to Dutch citizens who have returned after having enjoyed this free movement.

5.7 Conclusion

This chapter shows that the case law of the ECtHR and the CJEU has significant impact on Dutch legislation and policy with regard to the family reunification of TCNs and EU nationals with TCN family members. The rights of these TCN family members after admission are also influenced by European judgments. The government adapts its legislation to this case law, but tends to do this in a minimal way. The government does not comply with certain obligations of European law on its own initiative, if this would interfere with the political preferences of the government. After being forced to adapt its legislation, the adjustment is limited to the specific decision of the courts. The response to the Chakroun case is illustrative: the required level of the income was adjusted, but the required sustainability of the income was not, nor was the way of applying other requirements. As regards the pre-entry test, a similar decision by the CJEU was avoided, by granting a residence permit in a case subject to a preliminary ruling, as it was expected that this judgment would endanger the Integration Abroad Act. Thus, it seems that the government tries to postpone full compliance with European obligations for as long as possible.

As the requirements for admission have become more restrictive and the possibilities for loss of residence have been extended, it can be expected that both courts will keep defining the limits to these policies.
Chapter 6
Impact on family reunification

In this chapter, the impact of the conditions for family reunification on the actual family reunification, will be described in a quantitative and qualitative way. As the requirements for TCNs and Dutch citizens are the same and statistics do not distinguish between these on these groups, the quantitative part concerns both groups. As a second group, the family reunification of EU nationals will be described.

Each paragraph starts with a quantitative analysis of available statistics and evaluation reports on the development of the number of applications for family reunification, the number of permits granted and applications refused and the main nationalities of sponsors and family members since 2001. Secondly, a qualitative analysis will be carried out on the basis of information derived from the interviews with beneficiaries (migrants and/or sponsors), migration lawyers, NGO representatives, public officials and information from existing evaluation reports.

6.1 Family reunification with third country nationals or Dutch citizens: statistics

6.1.1 Development of the number of applications and granted visas for family reunification

Family reasons are the most important ground for the granting of an MVV. In 2005, 60 per cent of the MVVs were granted for family reasons (besides education, employment or other reasons), in 2010 this percentage dropped to 47 per cent. As similar figures of the years before are not available, it is not possible to determine whether the descending trend started already before 2005. The statistics also demonstrate that in the same period of 2005-2010, the number of MVVs issued for reasons of employment increased: from sixteen per cent in 2005 to 27 per cent in 2010.213

The number of MVV applications for family reunification and family formation decreased from 29,000 in 2004 to 11,948 in 2007.214 The number of MVV applications dropped most dramatically for immigrants originating from Turkey, Morocco, Brazil and Indonesia.215 However, the number of MVV applications for family migra-

213 INDIAC, *Visa Policy as Migration Channel in the Netherlands*, March 2012, p. 92. According to the explanation in the table, previous figures cannot be produced.
tion later rose to about 15,000 in 2008 and 2009.\textsuperscript{216} The number of applications for an MVV for family reunification was 15,773 in 2009, which increased to 18,621 in 2010, and went down to 15,540 in 2011 (Significant 2012a: 38). These figures include the number of family members of refugees applying, of which a growing number was rejected between 2008 and 2011 (see table 6.4).

\textit{Table 6.1 Type D visas (MVVs) granted for the purpose of residence.}

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Education</th>
<th>Employment</th>
<th>Family</th>
<th>Other reasons: total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>30,819</td>
<td>:</td>
<td>:</td>
<td>:</td>
<td>:</td>
</tr>
<tr>
<td>2002</td>
<td>37,867</td>
<td>:</td>
<td>:</td>
<td>:</td>
<td>:</td>
</tr>
<tr>
<td>2003</td>
<td>38,744</td>
<td>:</td>
<td>:</td>
<td>:</td>
<td>:</td>
</tr>
<tr>
<td>2004</td>
<td>29,322</td>
<td>:</td>
<td>:</td>
<td>:</td>
<td>:</td>
</tr>
<tr>
<td>2005</td>
<td>26,920</td>
<td>6.157 23%</td>
<td>4.366 16%</td>
<td>16,027 60%</td>
<td>370 1%</td>
</tr>
<tr>
<td>2006</td>
<td>26,931</td>
<td>6.583 24%</td>
<td>6.753 25%</td>
<td>13,278 49%</td>
<td>317 1%</td>
</tr>
<tr>
<td>2007</td>
<td>27,861</td>
<td>6.800 24%</td>
<td>8.689 31%</td>
<td>11,948 43%</td>
<td>424 2%</td>
</tr>
<tr>
<td>2008</td>
<td>34,202</td>
<td>7.554 22%</td>
<td>10.679 31%</td>
<td>15,560 45%</td>
<td>409 1%</td>
</tr>
<tr>
<td>2009</td>
<td>32,781</td>
<td>8.172 25%</td>
<td>8.303 25%</td>
<td>15,857 48%</td>
<td>449 1%</td>
</tr>
<tr>
<td>2010</td>
<td>33,759</td>
<td>8.293 25%</td>
<td>9.115 27%</td>
<td>16,000 47%</td>
<td>351 1%</td>
</tr>
</tbody>
</table>


\textit{Table 6.2 Development of applications of MVVs for the purpose of family reunification. The lowest line represents the applications of migrants who had to pass the integration test abroad.}


\textsuperscript{217} Not all TCNs or Dutch sponsors are obliged to apply for an MVV for family reunification (see chapter 2, para. 2.2.2). Because table 6.2 only shows the development of the number of applications for an MVV, it does not offer an overview of all applications for family reunification.
On average, between 55 and 60 per cent of the applications for a long-term visa for family reasons were granted.\textsuperscript{218} In the second half of the 1990s, around 70 per cent of the Dutch sponsors were granted a visa for family reunification (De Hart 2003: appendix). Although these figures are not completely comparable, they seem to hint that more applications are refused nowadays than in the 1990s.

### 6.1.2 Possible explanations for the decreasing numbers

There is some obvious relationship between sudden fluctuations in the number of applications and policy changes. First, after the abolition of the preferential treatment for Dutch citizens, refugees and holders of a permanent residence permit with regard to the income requirement on April 2004 (resulting in an increasing income level from 70 to 100 per cent of the social welfare level), a significant drop occurred. Second, the increase in the income requirement and the age requirement for married migrants (introduced in November 2004) led to a dip in the number of applications for spouses. A study investigating the impact of these stricter requirements, observed a decrease of 37 per cent in the first 16 months after the introduction of these measures (WODC 2009). There was also an obvious gender effect. The number of applications from male sponsors went down by 32 per cent, but female applicants were affected even more: the number of their applications decreased by 48 per cent. As an explanation for this difference, the researchers mentioned the fact that female sponsors more frequently have a part-time job, especially if they also take care of children. Although the Chakroun judgment in March 2010 resulted in a substantial lowering of the income requirement for family formation, this did not translate in a rising number of applications. We suggest that this indicates that sponsors still faced problems fulfilling the income requirement, not only with regard to the level, but also with regard to the criterion on sustainability.

The numbers also showed a dip immediately after the introduction of the pre-entry test in March 2006, followed by a slow and partial recovery and even a growing number in 2010. Another drop was visible after the level of the pre-entry test was raised in April 2011. Even though the number of applications for family reunification has risen again, considering the two drops related to the pre-entry test, it is assumed that this number would have been higher without the pre-entry test.

**Alternative strategies**

Statistically, there is no indication that migrants use opportunities to avoid the integration requirement, such as the application for a residence permit on grounds other than family migration.\textsuperscript{219} A study authorized by the government, demonstrated there was no evidence of a massive use by Dutch nationals of the Union rules regarding free movement (the so-called EU route) in order to avoid the Dutch family reunification rules. Although there was a slight increase in the number of Dutch citizens re-
questing family reunification during their stay in another Member State, they were generally found to have resided there for a long time (Regioplan 2009b).

**Changing choice of spouse**

Another development which might contribute to the decrease in the number of applications for family reunification is the decreasing number of marriages concluded with a spouse living abroad by second generation Turkish or Moroccan nationals. For years, more than 80 per cent of second generation immigrants of Turkish and Moroccan origin married a partner of the same origin. In 2002, almost half of them selected a spouse living abroad, while in 2012, only one in six Turkish or Moroccan spouses of the first and second generation did so. In 2011, 8.3 per cent of the marriages of migrants were related to marriage migration; in 2002 this was 20 per cent. This tendency could be partially related to the stricter rules for marriage migration since 2004. This ongoing decrease also influenced the number of applications for family reunification.

*Table 6.3 Development of the number of marriages concluded with a Turkish or Moroccan spouse who resided abroad from 2001 to 2011*

It seems that political debates on family migration policy in terms of ‘import-brides’, suggesting that family reunification is mainly caused by young Dutch-Turkish and Dutch-Moroccan men who want to marry a woman who is not ‘westernized’ (220) cannot be substantiated by statistics. In fact, of the Turkish-Dutch and the Moroccan-Dutch couples, two-thirds of the sponsors are female Dutch citizens. The same statistics show that, on the other hand, 60 per cent of the Dutch sponsors applying for family reunification with a TCN are male. The number of female spouses from Thai-

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220 See e.g. *Kamerstukken II*, 29 700, no. 3, p. 4 and Bonjour 2010: 306.
land, the Russian Federation and Poland who (re)unite with a Dutch male spouse has increased significantly during the last ten years.221

6.1.3 Pre-entry test

During the parliamentary debate on the Integration Abroad Act, the Minister of Immigration and Integration promised to closely monitor the effects of pre-entry test on the number of applications, the number of admitted family members, the pass rates and the number of exemptions. In April 2010, the government presented some figures to parliament.222 These figures showed that the pass rate for candidates doing the examination for the first time was quite stable (an overall percentage of 89 per cent) but that the pass rate reduced for migrants who had to do the examination twice or more often (72 per cent). This could indicate that there is a group that is unable to pass the test, no matter how many times they try. The development of the pass rates of the examination reveals certain factors influence the chance of passing the test: educational level, nationality and age.

Educational level

Since in April 2011 the level of the integration test was increased from A1 minus to A1 and it was extended with a reading test, the pass rate decreased significantly and has become increasingly dependent on the educational level of the applicant. The pass rate for the first examination in the first three months of 2011 was 91 per cent; after the introduction of the higher level on 1 April 2011, it fell to 68 per cent. Since then, the pass rate has raised gradually to 78 per cent in the first half of 2012, and it is expected that this percentage will be stable for the rest of 2012.223 However, the pass rate since April 2011 of low educated applicants taking the test for the first time has been 64 per cent. Of applicants with average education, 78 per cent have passed the test while 87 per cent of the highly educated applicants did. With regard to the reading test, the effects of the educational level are especially apparent: 6 per cent of the high educated failed this test when taking it for the first time, while 29 per cent of the low educated failed. Illiterates or applicants with another script passed the test for the first time in 68 per cent of the cases, against 81 per cent of applicants who spoke a Latin-based language.

The educational background of the candidates has also changed as a consequence of the pre-entry test: before the introduction of the strengthened test requirements, approximately 23 per cent of the applicants were low educated: in 2012, this percentage went down to 19 per cent. The percentage for the highly educated went up from 27 per cent 37 per cent in the same period (Significant 2012b).

222 Kamerstukken II, 2009-2010, 32 175, no. 9, 20 April 2010.
Nationality
Pass rates also differ between nationalities. In 2012, the pass rate for Moroccan applicants taking the test for the first time was 79 per cent, Chinese 61 per cent, Thai 77 per cent, Indonesian 92 per cent and Russian 97 per cent. The last two groups, have a relatively high education level: 58 per cent and 82 per cent respectively, while the average percentage of high educated applicants is 35 per cent. For most nationalities, the pass rates for the reading test were the lowest.

Age
Since the strengthening of the integration requirements, the youngest applicants have had the highest pass rate. The older the applicants, the lower their pass rate.

Exemptions
The numbers of exemptions show that the pre-entry test is applied very strictly. In 2009, the government informed parliament that 38 requests for exemption on medical grounds had been submitted, of which six had been granted. This was only one-third of the number in previous years, which indicates that the criteria have been applied more strictly during recent years. The monitoring reports are silent on the grounds for exemption for other reasons, such as Article 8 ECHR, although the minister had promised to monitor this aspect in reaction to the concerns of advisory bodies. On 1 April 2011, a hardship clause was introduced for situations in which a rejection would cause harshness. In the first half of 2012, 24 requests were lodged, four of them successfully.

6.2 Qualitative analysis

6.2.1 The main requirements
Since the same requirements apply to Dutch and TCN sponsors, we will describe both groups in the same paragraph. Because the age and housing requirement did not pose a problem in practice, we did not include them in the analysis.

Income
Earlier research has demonstrated that the income requirement is one of the most important hurdles to family reunification (De Hart 2003; WODC 2009). As demonstrated in the quantitative analysis, the income requirement had resulted in a significant drop in the number of admissions, so that for some of the families, family reunification had been either postponed or annulled.

The interviews in our studies confirmed that the income requirement was one of the most important hurdles, mentioned by both the individuals and the stakeholders interviewed. Further findings of the research demonstrated that although the income requirement might result in postponing the reunification, in most cases people ad-
justed their behaviour in such a way that they meet the requirement. Since these behavioural adjustments have had an effect on integration, we will discuss them in chapter 7. In this chapter, we will discuss the question of which applicants have most problems meeting the income requirement.

The WODC study concluded, unsurprisingly, that people in a weaker economic position were most affected by the income requirement. As demonstrated above, sponsors with a migrant background were affected more than native Dutch, women more than men, and younger more than older people. In the interviews, the gender and ethnic differences were hardly mentioned, since the respondents focused on the labour market position of those affected. They mentioned younger people who had just entered the labour market, people who were self-employed and the less educated as those with the most difficulties. Both the required income level and the duration (minimum one-year contract) caused problems.

The WODC study mentioned emigration as one of the behavioural adjustments (WODC 2009). Among our respondents, we found some indication that people who did not meet the income requirement left the Netherlands or considered doing so. One respondent told about her daughter (Dutch and Turkish nationality), who went to live in Turkey with her Turkish husband because she could not comply with the income requirement, although she would have preferred to remain in the Netherlands. Two respondents who did not comply with the income requirement considered living in another EU Member State in order to be reunited with their partners. Furthermore, according to the focus group participants, Dutch expatriates who wanted to return to the Netherlands with their foreign family members had been negatively affected by the income requirement because they had not built up an employment history in the Netherlands. As they usually had enough savings, lawyers recommended the use of the ‘EU route’. However, as we have seen in para. 6.1.1, the extent to which these behavioural adjustments are used should not be overestimated.

Although most of our respondents succeeded in meeting the income requirements, some of them did not.

A Turkish woman who had lived in the Netherlands for 26 years wanted to be reunited with her Turkish partner. They had taken this decision eight months previously, but she had not yet applied for family reunification because she did not fulfil the income requirement. She had medical problems which, she said, made it impossible for her to work and, therefore, she received welfare. The couple had also considered living together in Turkey, but she had a disabled son who lived in a home for disabled people in the Netherlands and whom she did not want to leave behind. She also had a 15-year-old son living with her. Her daughter was planning to live with her Turkish husband in Turkey because she could not comply with the income requirement either. In her view, she felt that she should be exempted from the income requirement because of the impossibility for her to work and because of her disabled son.

A Dutch-Turkish woman living in the Netherlands had a number of serious medical problems. Because of this, she had been receiving disability benefits for 22 years. At a certain point, she went to Turkey where her family lived. However, as she could not get the necessary medical assistance there, she returned to the Netherlands. Once she was back she applied for family reunification, but her application was refused.
According to the authorities, she did not comply with the income requirement which, in the case of incapability to work, required the receipt of welfare benefits for five consecutive years. Because of her stay in Turkey, her benefits had been suspended and the 22 years of receiving welfare before her stay in Turkey were not taken into account.

Because in such cases it would be impossible to be reunited in the Netherlands, all the lawyers and several individual respondents advocated that more exemptions should be made with regard to the income requirement. Most of the respondents said that an individual assessment of the income requirement should be carried out, especially because they considered themselves to be able to support their families with a lower income than the formally required level. One lawyer and two individual respondents criticized that the income and job opportunities for the family member in the Netherlands were not taken into account. In fact, these respondents pleaded for a return to the income requirement that had applied before 2004 or even 1993, because they considered it inequitable that families could not live together because of this requirement.

Pre-entry test
As we have seen in the quantitative analysis, most applicants pass the integration abroad examination. The interviews confirmed that most family members succeeded in passing the examination, but they also made clear that this occurred at considerable cost. In several cases, the integration requirement led to postponement of family reunification because family members first had to prepare for the test and if they did not pass the examination, had to retake it. The interview participants explained that most of the sponsors complied with the requirements in the end, even if this meant that they had to make an extra effort. Thus, as with the income requirement, it usually led to postponement of family reunification until the requirements were fulfilled, but not to relinquishment of their reunification plans.

As earlier research has also demonstrated, most of the family migrant said that it was difficult for them to learn Dutch in their country of origin and to pass the examination, as they encountered several practical hindrances. The first practical hindrance was that people had to travel long distances if they did not live in the capital. They had to organize and pay for the travel and stay in the capital in order to pass the examination there. In some cases, there was no Dutch embassy in the country of origin, such as in Cameroon and Ecuador, which meant family members had to travel to another country in order to take the examination.

A second practical hurdle concerned the possibilities to learn Dutch in the country of origin. While in countries like Morocco courses were available in the larger cities, in other countries, such as China and the Republic of Ecuador, it was difficult to find a Dutch language teacher. For many partners the help of the Dutch sponsor, by providing books and practice through Skype, was vital to learning the language. Some of them travelled to the Netherlands on a tourist visa in order to take a course there.
Finally, the family members sometimes had to combine learning the language with work and care tasks. Because of these difficulties, many respondents explicitly advocated for the abolition of the integration examination abroad or for a voluntary test.

6.2.2 Experiences with the admission procedure

Family members informed themselves about the procedure and requirements after they had already decided to reunite with their family members. This meant that they often had no, or limited information, at the time the decision was made and were sometimes surprised that it was so difficult and that so many requirements had to be met. People received information from the IND, and also from municipalities, Dutch embassies, and NGOs, such as Stichting Buitenlandse Partner, as well as from other couples involved in an application procedure. Most applicants did not consult a lawyer before they started the procedure; lawyers were only contacted when problems arose and applications were refused. One of the complaints was that the information was sometimes contradictory, e.g., between the embassy and the IND, and also from different employees within the IND. This led to a lack of clarity and insecurity about what was actually required.

Individuals and lawyers complained about the negative attitude of the IND towards applicants, and also about the more general discourse about family reunification as unwanted migration. Applicants were not trusted and not considered to be human beings, a lawyer explained. The IND-interviews within the context of fraudulent marriages were specifically mentioned in this respect. Small inconsistencies could result in rejection of the application. According to some lawyers, the IND sought reasons to reject an application. Others indicated that the IND has hardly any discretion to deviate from the strict rules in individual cases. Although the legislation actually leaves room for deviation in individual cases, this room is hardly ever used. To some extent, this is explained by the centralization of the IND and the transformation from a street level bureaucracy with face to face contact with applicants to a system level bureaucracy with a computerized procedure without face to face contact. This means that individual officials are held accountable by their supervisors which makes it much more difficult to find solutions in individual cases (Böcker & De Hart 2011: 415, De Hart 2003: 40-41).

Duration of the procedure

The duration of the admission procedure has been an issue for many years and the IND has made several efforts to limit it (see chapter 4). However, many respondents still complained that the procedure, generally about six months, took too long. Furthermore, according to lawyers, people sometimes had to wait about two months before receiving a date for taking the pre-entry test at a Dutch embassy. In exceptional cases, the procedure took considerably longer; in one case it took more than one and a half years, because of an appeal procedure following an initial rejection.

Lawyers criticized the long duration of the procedure, but nuanced the perception of long procurees, explaining that people also experience the procedure as taking
too long because of the stage of their relationship. One lawyer explained the dilemma for family members applying for reunification:

‘People who apply for a visa often do this with a reason, for example because they are just married or expect a child. The IND- procedure takes time, but often there is no time for example if a baby is on its way.’

Earlier research indicated that it was not only the length of the procedure itself that had an impact on the applicants, it was also the insecurity and fear, the passivity of waiting for a decision and lack of information about how long it would take that made the application period difficult for applicants (De Hart 2003: 200). It was as if their lives were on hold. As a Dutch sponsor about the separation with her partner with whom she had a child explained:

‘It feels as if I cannot move forward with life. It is waiting until we can be together.’

Costs of the procedure
The cumulation of various requirements that involve different costs to be made has made the application procedure a sometimes costly affair. This was not only because of the high fees that were applicable in the Netherlands at the time we conducted the interviews (see para. 2.2.2). The costs for the whole process differed, mainly because of the expenses incurred for (preparation for) the language examination. A Dutch-Chinese couple had paid in total about €2,000 for the visa because the wife had had to stay in a hotel in Beijing in order to take the pre-entry test there. Her stay in the capital took longer than initially planned because she failed the first time and the second time there was a technical problem and she had to retake the test. A Dutch-Tunisian couple had spent about €3,000, including €800 for Dutch classes.

6.3 Refugees

6.3.1 Quantitative analysis

As a result of the introduction of new, stricter criteria on the existence of an ‘effective family bond’ for family reunification with refugees introduced in July 2009, the number of visas granted for this purpose has dropped dramatically since then. Many rejections concern applications for children, more specifically foster children from Somalia. In addition, applications by spouses who cannot convince the IND that they still have an effective family bond, who have formed a family outside the country of origin or don’t have the same nationality as the sponsor, are also rejected.
The Dutch division of *Defence for Children* managed to obtain from the Ministry of Interior the number of applications for family reunification of refugees, and the decisions. These figures showed that the percentage of rejections rose from 12 per cent in 2008 to 81 per cent in 2011. This clear proof of the immense increase in the number of rejections led to parliamentary questions. According to the government, however, the numbers demonstrated that its intensified policy on the combat of fraudulent applications had been successful.

### 6.3.2 Qualitative analysis

Two specific problems relating to family reunification by refugees emerged from the interviews. The first obstacle was the so-called three-month period (see para. 2.2.5). The individuals and lawyers involved in the research all pleaded for abolition or at least an extension of the three-month period, and for more exemptions in individual circumstances. Two cases from the interviews illustrate vividly the difficulties that could arise in practice.

A Burundian refugee woman lost her six children during her flight. It took two years until they were found in Rwanda. Hence, she could no longer make use of the exemptions for family reunification.

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reunification of refugees, but had to comply with the regular requirements, including the income requirement, which she did not meet.

In the second case, a refugee woman who was in the last stage of her pregnancy wanted to apply for family reunification with her four children. However, before she could file the application within the three months after her refugee permission was granted, she developed medical complications and had to stay in the hospital until she gave birth to her child. As a result, she was unable to file the application in time and it was refused. After her lawyer issued a complaint, the IND informed her that her application would be rejected but that it might be treated as a regular family reunification application under the regular requirements. In the interests of her client, the lawyer withdrew the complaint and agreed to the proposal by the IND.

The second and more major problem of ‘effective family bond’ was discussed in para. 2.2.5. The numbers presented in table 6.4 present the problem clearly. The lawyers interviewed confirmed that the requirement for an effective family bond was a major problem, indicating that the cause of this high number of refusals lay in the practice of family members being interviewed about the family ties instead of checking documents or doing a DNA test. This especially occurred with Somali family members, who often did not possess a passport. According to the lawyers interviewed, the answers in the interview had to fully correspond with the details the refugee had related earlier in the asylum procedure and each contradiction was blamed on applicants. Sometimes children were questioned for hours.

Another problem relating to these interviews is that they were translated twice, e.g. from Somali to English and from English to Dutch, thus increasing the risk of incorrect interpretation. All these circumstances taken together often led to disbelief of their claim of the family ties and made it almost impossible for families to be reunited.

Lawyer Schurink-Smit told of a case of four Somali children who wanted to be reunited with their mother who had been admitted as a refugee. No DNA test was done and the children had to attend an identification interview. Their neighbour took them to the Dutch embassy where they had to answer 280 questions in eight hours, during which time they did not eat. The children were, amongst other questions, asked about the school hours at their school in Mogadishu. They all gave different answers which led to refusal of the application. Their mother explained that because of the war school did not take place every day and school times always differed. However, according to the lawyer it was not possible to clarify these contradictions at a later stage; hence, the complaint and appeal in this case were rejected.

Two more cases were provided by the UNHCR Netherlands.

A Somali man, born in 1983 and belonging to the Rahanweyn clan, was attacked in February 2007 because his photo and video shop were said to be against the rules of Islam. After being
attacked and seriously abused again, he fled to the Netherlands. He left his wife behind; she was threatened and asked where her ‘infidel’ husband was. They abused her and threatened to murder her husband.

In July 2009, he was granted a residence permit under Article 29, paragraph d of the Aliens Act. His application for family reunification was rejected because there was no objectively verifiable evidence that the man and his wife and (foster) children had an effective family bond. A DNA test confirmed that the children were biologically the children of the couple and that the foster children were indeed half-brothers. However, according to the IND, the identification hearing with his wife had contained too many inconsistencies on several relevant points, such as the threats from the militia, the sale of the store and the place of residence of the family since May 2007. Based on the DNA test and the family composition, the court in The Hague found it plausible that the man and his wife had lived together prior to his departure. The IND has appealed this decision. At the time of writing, there has still been no final decision in this case.

H., a Somali boy belonging to the Ashraf tribe, applied for asylum in the Netherlands when he was 16 years old. Because he had suffered physical as well as verbal abuse because of the ‘white’ colour of his skin, he was granted asylum. His father had already been killed in Somalia, so he only applied for family reunification with his mother, four months after he was granted asylum. The letter from his guardian to the IND, stating his negligence and asking it to still consider the request under favourable rules did not change the position of the immigration authorities.

In response to these practices, all lawyers have pleaded for DNA tests instead of identification interviews because, in their view, in cases concerning biological children a DNA test should be sufficient. However, we should not lose sight of the problems involved in DNA testing, such as the high cost for family members, that some ethnic groups are more frequently tested than others, and the risk that documentation proving family relationships will no longer be accepted (Taitz et al. 2002). Furthermore, DNA testing reproduces the biological family model as a standard, in contrast to the more pluralistic and social concepts of family in the Netherlands and within the European Union (Heinemann 2012).

6.4 Union Citizens

6.4.1 Quantitative analysis

The development of the number of applications and permits granted to third country nationals residing with EU nationals in the Netherlands is presented below. As already mentioned in chapter 3, in response to the political debate on the so-called Belgium route, the government ordered research into this practice. Table 6.6 shows that this number increased a little in 2007 and 2008, but has remained a relatively modest part of the number of applications for family reunification with other EU nationals.
In the second half of 2010, approximately 1,510 applications for family reunification of TCNs on the basis of Union law were submitted. Compared to the second half of 2009 (2,180 applications), this means a decrease in the number of applications by 31 per cent. The percentage of permits granted in the second half of 2010 was 68 per cent, while in the second half of 2009 this was 71 per cent; hence, the number of rejections has increased. This can possibly be explained by the stricter control practices as described in chapter 4.

Table 6.5 Number of family reunification of EU citizens residing in the Netherlands with their third country national family members

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of applications</th>
<th>Number of permits granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>1,109</td>
<td>923</td>
</tr>
<tr>
<td>2006</td>
<td>1,057</td>
<td>896</td>
</tr>
<tr>
<td>2007</td>
<td>1,966</td>
<td>1,622</td>
</tr>
<tr>
<td>2008</td>
<td>2,936</td>
<td>2,558</td>
</tr>
<tr>
<td>2009</td>
<td>3,863</td>
<td>2,759</td>
</tr>
<tr>
<td>2010</td>
<td>3,343</td>
<td>2,349</td>
</tr>
</tbody>
</table>


Table 6.6 Number of granted residence permits for family reunification of third country national family members with Dutch nationals on the basis of Union law, 2005-2008, and the percentages of the total numbers of table 6.5.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of permits granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>57 (6%)</td>
</tr>
<tr>
<td>2006</td>
<td>57 (6%)</td>
</tr>
<tr>
<td>2007</td>
<td>146 (9%)</td>
</tr>
<tr>
<td>2008</td>
<td>493 (19%)</td>
</tr>
</tbody>
</table>

Source: Eindrapport gemeenschapsrecht en gezinsmigratie, Regioplan 2009.

6.4.2 Qualitative analysis

Dutch nationals living in another EU Member State

As we have already indicated, some families who do not meet the requirements for family reunification choose to live in another EU country in order to avail themselves of the more liberal requirements of EU migration law for Union citizens. In our study, we found three Dutch nationals who had reunited with their partners in another European country (Germany, Spain and Belgium). In one of those cases however, the couple had ties to the other EU Member State. This Dutch-Peruvian couple applied for family reunification in Spain, because they had been living there when they met. Although the Dutch female sponsor first considered applying to the Netherlands, the IND informed her that this was also possible in Spain, under the more liberal requirements. When she finished her internship in Spain, the couple decided to return to the Netherlands together because she missed her family and her husband, who was a doctor, was unable to obtain a permanent residence permit in Spain.

The other two couples decided to live in Belgium and Germany respectively, because it was the ‘least intrusive way’ to be together. The couple that went to Belgium did not meet the income requirement because the Dutch female sponsor was still a student; the couple living in Germany chose to do so after the Chinese wife had
come to the Netherlands on a tourist visa. In both cases they saw living in the country of origin of the partner as not an option, because of the insecurity and economic situation in that country or because it would mean giving up the sponsor’s job opportunities.

Two other Dutch sponsors considered moving to another EU country because of difficulty meeting the income requirement. Lawyers said they sometimes recommended the use of the EU route, especially in the case of Dutch expatriates who wanted to return with their foreign family members to the Netherlands. This was because they usually had extensive savings but no a one-year employment contract with a Dutch employer (see paragraph 6.4.2). (Note that this is para. 6.4.2)

Although in the political debate the EU route is associated with fraud and fraudulent marriages (See chapter 3 and 4), this is not confirmed by the interviews. Some cases have concerned people who had already lived abroad together for several years, people with sufficient financial means, and, according to some respondents, people who were highly motivated because they had left their families and friends behind and moved to a country where they usually did not know anyone and where they had to rebuild their lives. According to some, the requirements for EU citizens who want to reunite with their family members should also apply to Dutch citizens in the Netherlands who do not make use of the EU route. This indicates that for respondents the EU route is seen as a legitimate means to the goal of family reunification, and that the more restrictive family national migration policy in the eyes of respondents lacks such legitimacy. It has to be noted that the EU route offers an opportunity for Dutch nationals only and not for TCNs. In this respect, Dutch nationals still hold an advantaged position.

6.5 Conclusion

In looking at the statistics, we have to conclude that the introduction of restrictive measures, like the income requirement for family formation in 2004 and the pre-entry test abroad in 2006, have led to a drop in the number of applications. Some researchers have described these decreases as a way of self-selection: sponsors and family members who know they cannot meet the criteria, no longer apply for family reunification or, looking at the gradual recovery of the numbers, postpone the family reunification (Odé 2009).

The interviews demonstrate that the requirements have resulted in longer procedures and postponement of family reunification; in a minority of cases people leave the Netherlands for the country of origin of the foreign partner or an EU country, or continue to live separately. As stated, the rules that apply to Dutch nationals and TCNs are the same, and in some respects Dutch nationals are even more disadvantaged in comparison to TCNs, as they are not able to invoke the Family Reunification Directive. We, nevertheless, also found differences in the ability of sponsors from a migrant background to comply with requirements. Moreover, the opportunities open to sponsors and their partners differed: while Dutch sponsors and their family members could opt for the EU route, the only route available for TCNs was emigration to the country of origin of the family member.
We found specific problems for refugees in family reunification with regard to the three-month period and the admission of children.

In comparing the findings of the quantitative and qualitative research, it is striking that the apparent gender, ethnic and socioeconomic differences in ability to comply with the requirements were not raised as an issue in the interviews. Although the restrictiveness of the requirements was generally criticized, individual respondents and lawyers claimed that those who were willing and made sufficient effort were able to comply. To some extent, this could be explained by what Leerkes and Kulu-Glasgow have called the willingness of the sponsor to pay the (material and other) costs and the couple’s commitment to continuing their relationship (Leerkes & Kulu-Glasgow 2011). On the other hand, the ability to reunify with family members was made into an individual accomplishment, obscuring the structural factors that played a role in the effects of Dutch family migration policy.
Chapter 7
Impact on integration

In this chapter, the impact of the requirements for family reunification, the procedure and implementation of family reunification rules on integration will be assessed. First of all, a quantitative analysis of the pre-entry test and the inland integration test will be carried out, based on statistics and evaluation reports on the development of the number of applicants for a test and the number of applicants who pass a test. Secondly, a qualitative analysis of the impact on integration will be carried out on the basis of information from the interviews with beneficiaries (family members and sponsors), migration lawyers, NGO representatives, public officials and information from existing evaluation reports.

7.1 Quantitative analysis of the inland integration test

As described in para. 2.5.1, from 1 January 2007 to 1 January 2010, admitted family members were obliged to participate in integration courses and to pass the integration examination within 3.5 years. Since 1 January 2010, passing this examination has become one of the requirements for a permanent or independent residence permit. Furthermore, as of 1 January 2013 not passing the test within 3.5 years of arrival can also result in the withdrawal of the temporary residence permit. The connection between passing the test and residence rights make the performance of the family members in this regard more important. The results of the tests may say something about their stage of integration, but perhaps even more about the security of their residence rights, which in itself may affect their integration.

The first years of the integration obligation

In the period 2007-2009, almost 33,000 people took the full integration programme, which means that they participated in all four parts (electronic practice examination, practice examination, test in spoken Dutch, knowledge of Dutch society) at least once. This figure was significantly lower than the target figure of 115,000, and was at least partly caused by the limited number of integration facilities provided by the municipalities and the slow start of the programme. The number of first examinations shows an upward trend. In 2007, approximately 1,000 migrants took the test for the first time, while in 2009, around 23,000 did so. However, the percentage of migrants passing the test dropped: in 2007 the pass rate for persons who took the full examination for the first time was 85 per cent, in 2009 it was 74 per cent.

The pass rates were considerably higher than the target figure of 55 per cent. However, table 7.1 shows a drop in the pass rates. This can be explained by the fact that in 2009 the number of examinations increased and also because the migrants
who were the first to take the test (in 2007) were the best integrated and highly motivated.

Table 7.1 Percentage of candidates who passed the full examination the first time in the given year and cumulative pass rates 1 or 2 years later

<table>
<thead>
<tr>
<th>Year first full exam</th>
<th>Pass at first time</th>
<th>Cumulative 1 year later</th>
<th>Cumulative 2 years later</th>
<th>Not passed yet</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>85 %</td>
<td>95 %</td>
<td>96 %</td>
<td>4 %</td>
</tr>
<tr>
<td>2008</td>
<td>82 %</td>
<td>89 %</td>
<td>-</td>
<td>11 %</td>
</tr>
<tr>
<td>2009</td>
<td>74 %</td>
<td>-</td>
<td>-</td>
<td>26 %</td>
</tr>
</tbody>
</table>


Gender and age
Pass rates broken down by age and sex demonstrate that until mid-2010, female candidates performed slightly worse, as 76 per cent passed the test as against 83 per cent of the male candidates. Young candidates up to age 25 passed the test much more frequently (85 per cent) than migrants aged 56 and older (60 per cent). However, it must be noted that this last group was much smaller (around 500 persons) than the other age categories (a few thousand).

Table 7.3 Pass rates according to age

<table>
<thead>
<tr>
<th>Age</th>
<th>Number of exams</th>
<th>Number of successful candidates</th>
<th>Pass rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 25</td>
<td>2700</td>
<td>2300</td>
<td>85 %</td>
</tr>
<tr>
<td>26 to 35</td>
<td>14000</td>
<td>11700</td>
<td>84 %</td>
</tr>
<tr>
<td>36 to 45</td>
<td>11100</td>
<td>8500</td>
<td>77 %</td>
</tr>
<tr>
<td>46 to 55</td>
<td>4100</td>
<td>2700</td>
<td>66 %</td>
</tr>
<tr>
<td>56 and older</td>
<td>800</td>
<td>500</td>
<td>60 %</td>
</tr>
</tbody>
</table>


Nationality
Pass rates broken down by nationality show that from the larger migrant groups obliged to take the test, Turkish nationals had the lowest pass rate (63 per cent), followed by Chinese (73 per cent) and Moroccans (74 per cent). Amongst the highest percentage were nationals from the former Soviet Union (90 per cent) and former Yugoslavia (85 per cent).

Since September 2011, the worst performing group, the Turkish nationals, are no longer obliged to take the test.

Tests results and their relation to the issuing of permanent or independent residence permits
These selective effects also become apparent in the access to permanent residence. The Dutch statistics demonstrate that the number of permits issued for permanent
residence decreased following the introduction of the integration requirement in January 2010, from 17,520 in 2009 to 10,520 in 2012.\textsuperscript{226} The number of permanent residence permits granted to Moroccan migrants, dropped by two-thirds.\textsuperscript{227} The number of applications for a permanent or independent residence permit shows a similar trend: in 2008, 28,150 migrants applied for a stronger residence permit and in 2009 23,430 migrants did so. In 2010, the year the requirement was introduced, this number dropped to 12,260 applications.

This decrease shows that the integration test created an obstacle to family migrants gaining a stronger residence right. In the first nine months of 2011, 9,910 applications were registered, which justified the expectation that the total number in 2011 would be similar to the number in 2010. This meant that half of the migrants who would be entitled to a permanent (and thus stronger) residence right now remained in a temporary (thus weaker) position. The number of negative decisions for the applications did not change substantially.\textsuperscript{228} The integration test has, thus, led to self-selection among potential applicants for a permanent residence right: the ones who did not pass the test did not apply for permanent residence but perhaps, instead, for the renewal of a temporary permit.

We are not aware of any alternative explanations for the drop in the number of applied and granted permanent residence permits. However, it is in any case clear, since the number of naturalizations has dropped since 2003, the fall in the number of permanent residents cannot be explained by migrants turning to naturalization.

\textit{Table 7.4 Number of applications for a permanent or independent residence permit and the number of positive decisions. There are no figures available for previous years}

\begin{table}[ht]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
 & 2008 & 2009 & 2010 & Until September: 9,910 \\
\hline
Number of applicants for permanent permit & 28,150 & 23,430 & 12,260 &  \\
\hline
Percentage positive decisions & 85\% & 78\% & 81\% & 87\% \\
Refugees: 71\% & Refugees: 94\% & Refugees: 66\% & Refugees: 71\% \\
\hline
\end{tabular}
\end{table}

\textsuperscript{226} Kamerstukken II, 2011-2012, 33 086, no. 6: 38.
\textsuperscript{227} Number of granted permanent residence permits 2009-September 2011, with reference to nationality, gender and age. Source: IND, Appendix to Kamerstukken I, 2012-2013, 33 086, no. EK, E.
\textsuperscript{228} In 2008, the percentage of positive decisions was 85 per cent; in 2009, 78 per cent; in 2010, 81 per cent; in the first nine months of 2011 87 per cent. With regard to holders of an asylum status, the percentage of positive decisions in 2008 was 71 per cent; in 2009, 94 per cent; in 2010, 66 per cent; in the first nine months of 2011 71 per cent. Despite the sudden increase in 2009 and a drop in 2010, the percentage in 2011 was similar to 2008.
7.2 Qualitative analysis

7.2.1 The main requirements

Income requirement

As stated above, people sometimes have to put a lot of effort into meeting the income requirement, sometimes at considerable cost, for what we interpret as integration. From this and other research the following adjustments in behaviour have been found (WODC 2009, De Hart 2003):

a. Adjusting the labour market position, e.g. by negotiating the income or labour contract with employer, changing jobs or staying in an unsuitable job, working more hours, or working below the (educational) level of their capabilities. Lawyers said that they often saw sponsors taking any job, even below their level of education, if this was the only possibility for fulfilling the income requirement. A Dutch-Turkish respondent who had studied International and European law worked as a carer for disabled people, because it was the only job she could find that allowed her to meet the income requirement. This working experience is not useful for her in building a relevant cv.

b. Discontinuing studies: the WODC study (WODC 2009) found that a proportion of the respondents discontinued a study or labour market oriented course as a consequence of the income requirement. This was confirmed by our interviews. One respondent stopped her studies in order to work and fulfil the income requirement; another had to neglect her studies because of her work. One student who wanted to continue studying went to Belgium to apply for family reunification there (see para. 6.2.2). Another respondent, who worked as well as studied, had no time for activities outside the curriculum that were often considered important by employers (trainee, board membership, etc). She feared that she would have fewer job opportunities after her course because of this.

c. Emigrating to another EU country or the country of origin

d. Illegal migration. The WODC study (WODC 2009) mentioned this strategy, but we did not find this in our research.

The conclusion can be drawn that as a consequence of strategies a. and b., the labour market position of the sponsors has deteriorated, which may impact the integration of the family as a whole (the socioeconomic and labour market position) (De Hart 2003: 165). Arguments for the stricter income requirement also assumed that the family migrant would be in a disadvantaged labour market position. Research has demonstrated, however, that the proportion of family migrants working from the second year of residence is only a few per cent lower than those of labour migrants, although female family migrants work less often, because of their caregiving responsibilities.229

229 Integratiekaart 2006, Den Haag: Centraal Bureau voor Statistiek, p. 54.
It is important to note that most of our respondents met the income requirement and, hence had the opportunity to adjust their labour market position. For those who could not, it was a question of whether integration had been improved by the income requirement. Some legal practitioners observed that for those people in a weaker labour market position, who were unable to meet the income requirement, the resulting postponement or annulment of family reunification plans only perpetuated their psychological and social isolation, which could have been lessened if they had been allowed to reunite with their family member. In their view, the family was necessary for people to feel well and reunification with the family was necessary to improve the situation of the sponsor in the Netherlands.

The behavioural strategy of emigration (c.) impacted integration in another way: leaving the country for a considerable period of time, which negatively impacted the integration of the family in the Netherlands. A Dutch respondent who had used his mobility rights to move to Germany in order to be with his Chinese wife, commented on the impact this had had on their integration, and leaving behind his family and large social network in the Netherlands. This took time to rebuild after return, and could be easily used to facilitate integrating the family.

Nevertheless, the problems described did not mean that all respondents opposed the income requirement. Respondents supported the underlying thought that people had to be self-supporting and support their family members. However, they did always think the level of the income requirement was justified. Some Dutch sponsors wanted the income requirement for Union citizens with a TCN to apply to Dutch sponsors.

Pre-entry test

Earlier studies of the pre-entry test in the Netherlands have demonstrated that the effects on integration are ‘marginal’ (Strik et al. 2010: 329). One of the explanations has been that the level of the test is insufficient to significantly contribute to language proficiency, but also that language proficiency is not the only factor contributing to labour market integration. The evaluation of the pre-entry test that was conducted at the request of the government demonstrated that migrants’ Dutch language skills at the beginning of the integration course in the Netherlands were only marginally higher than those of a control group of immigrants who were not required to take the test. The impact of learning the Dutch language in the Netherlands was much more significant and, therefore, more effective, this study concluded.

Although respondents in our study did not deny the importance of integration and language proficiency, they were equally critical of the pre-entry test’s contribution to it. A number of respondents however stressed that they would also have prepared for Dutch society without a test (Strik et al. 2010: 319). In our study, all but three respondents said that it would be better to learn Dutch once the family member arrived in the Netherlands. On the other hand, a respondent from Serbia was in favor of the pre-entry test, as it had helped him to find a job. The majority of the respondents however, including the lawyers, considered the pre-entry test to be ineffective.

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230 See also IOT publication.
for integration in the Netherlands, also referring to the content of the knowledge of Dutch society that was required.

A Chinese family migrant explained that she had learned the answers of the knowledge of Dutch society test by heart, without actually understanding what they meant. She found some questions ‘strange’, for example, whether female circumcision was allowed in the Netherlands, since she did not know what female circumcision was, as it rarely happened in China.

As in other studies, our study confirmed the selective effect of the pre-entry test for certain groups: lower educated (including illiterate persons) and elderly persons. Acknowledging the difficulties for older family migrants, some respondents pleaded for a general exemption for migrants aged 55 or older.

As with the income requirement, most respondents in our study managed to pass the pre-entry test. No research has been conducted so far on the choices spouses make when the test turns out to be a permanent obstacle to family reunification. It seems that the pre-entry test, especially in combination with other conditions, serves as selection based on education and age, instead of the intended selection based on motivation. Also, several respondents saw it mainly as another bureaucratic hurdle to take, which did not significantly contribute to integration.

### 7.2.2 Separation of parents and children

What came up prominently in the interviews with lawyers was the separation of parents and children after divorce. Lawyers indicated that different norms were employed in family law and immigration law (see also Van Walsum 2000). While in family law the relationship between parents and children was, in principle, always upheld unless the interests of the child were violated, in immigration law, according to some lawyers, the separation of parents and children seemed to be taken for granted, as the normal state of affairs. Secondly, while in family law parents were encouraged to arrange visitation rights between themselves, in immigration law, a court verdict was required, lawyers pointed out. Thirdly, the way fatherhood was determined differed in family law as compared to immigration law. According to one lawyer, the IND checked only whether a father had visitation rights and paid alimony. If he did not, he was assumed to have no ties with the child and could be expelled (see also De Hart 2001). A lawyer posed the following questions:

‘Should not the authorities always start from the assumption that there is always a natural bond between parents and children, regardless of what it says on paper and what is being paid? Do children not always have a need for contact with their parents, to have their parents within reach?’

In this context, some stakeholders pointed to the vulnerable position of the dependence of the family migrant on the sponsor after divorce. During divorce proceedings, tensions sometimes increased and the sponsor might immediately notify the IND
about the divorce or refuse to cooperate with a visitation arrangement, aware of the consequences of possible expulsion. It was seldom possible to mend this later, when things had settled down. As one of the lawyers stated:

‘It really depends on the sponsor’s attitude whether the migrant partner can remain in the Netherlands after divorce or not’.

But separation of parents and children was not only an issue in the case of the break-up of the relationship or marriage between parents. Lawyers also had as clients families who were together, but the residence permit of the family migrant had been refused or withdrawn because the sponsor did not meet the income requirement, although they had a child in the Netherlands. Putting emphasis on the position of the child, it was noted that the integration of the child would be best served if both parents lived in the Netherlands. If a father or mother was expelled after a difficult legal procedure, this also affected the child and the child’s integration (see also Dreby 2012).

7.2.3 Permanent residence and integration

Inland integration requirement

Earlier studies (Strik et al. 2010) found that a majority of the respondents were in favour of the obligation to participate in integration courses in the Netherlands because of the improved language skills of migrants and because it helped to prevent isolation in particular certain groups of migrants (women, migrants already resident in the Netherlands – so-called oldcomers – and migrants of Chinese origin). At the same time, ‘oldcomers’ turned out to be the most difficult to motivate, and some of the respondents thought it unjust to oblige them to take a test after many years’ residence in the Netherlands, and pointed out they would have been motivated to learn the language 20 years earlier.

Other categories of migrants that experienced difficulties with the integration requirement that were mentioned were migrants with a full-time job, who had difficulty combining their activities with the integration requirements, and women who were not supported by their husbands.

These findings were largely confirmed by our study. All respondents stressed the importance of integration and they were more positive about the inland integration test than about the pre-entry test. However, respondents were critical about the inland integration too. Some of them, especially younger migrants, thought the obligation unnecessary to motivate them to learn the Dutch language. Others considered the level of the test too low to create access to the labour market. In their view, passing the test did not seem to be of much value for migrants who were seeking a job. Many respondents pleaded for free or affordable courses. Those family migrants who received support from a mentor in finding a suitable course, learning the language, and finding a job evaluated this positively.

Independent and permanent residence

As indicated above, access to permanent residence has become more difficult because the integration requirement has to be met. Some lawyers have indicated that family
members are more interested in Dutch citizenship than in permanent residence. However, the possibilities to naturalize have become more restricted since a naturalization test was introduced in 2003, and replaced by the Integration test in 2007. Since 2003, the number of naturalizations has dropped by 50 per cent (Van Oers 2013). Since the inland integration test has also become a condition for permanent residence, people who have difficulties passing the test may be excluded both from naturalization and permanent residence and be forced to prolong their temporary residence time and again. In relation to divorce, these conditions prolong dependence on the sponsor, since the possibilities for obtaining an independent residence permit are restricted.

Remaining in temporary residence may have a prejudicial effect on integration in several respects. The adjustments that have to made at the time of admission, as described above, will continue as long as residence is not secure, e.g. as long as the income requirement has to be met. This means that the consequences for the labour market position continue for several years and seriously hamper the socioeconomic position of the family, e.g. as regards job opportunities and housing. The Dutch Commission for Equal Treatment, for example, has found out that holders of a temporary residence permit often do not get a mortgage to buy a house.231

Insecure residence may also hinder the emancipation of female family migrants, because choices made in the relationship and tensions within the family may have consequences for the residence status. Although these issues were not raised during the interviews in our study – most couples were at the beginning of their relationships or at least they were just reunited – the consequences have been well documented in earlier Dutch studies (Van Blokland & De Vries 1992, Van Walsum 1992, Van Blokland et al. 1999, ’t Hoen & Jansen 1996). The integration requirement as a condition for independent or permanent residence may prolong the dependence of at least a proportion of migrant women for years. As the aforementioned studies have demonstrated, this will prevent them from participating in society in the way they wish. All these consequences lead to the paradoxical result that the test, which was introduced to promote integration, hampers the integration of the most vulnerable migrants: illiterates, the low educated, elderly migrants, refugees and women.

7.4 Lives on hold and sense of belonging

The interview respondents described the consequences of long application procedures in vivid terms. Migrants and their family members felt that they could not build their life as a family as long as the application was pending. Many described their lives as being on hold, void of sense and paralyzing. They found it difficult to make plans

for the future, such as buying a house, or taking up a course of study. The longer the procedure took, the stronger were these effects.

Earlier research concluded that the duration and uncertainty of the admission procedure led to stress and health issues for sponsors and family migrants (Strik et al. 2010, WODC 2009, De Hart 2003). Our interviews confirmed this, for both Dutch and TCN sponsors and their families. Several respondents explained how the uncertainty and the difficulties they faced during the admission procedure led to emotional stress, concentration problems (also at work), insomnia, depression, and in some cases even physical complaints. The separation of family members during the admission procedure and the frequent moments of farewell were experienced by many respondents as a heavy physiological strain. As one Dutch sponsor said:

‘You wake up with it and you take it to bed when you are going to sleep.’

This was so especially for sponsors who were refugees. As we have seen, the requirement for an effective family bond for refugees is checked in identification interviews that are a heavy burden for families. During the admission procedure refugees are often very concerned about the safety of family members left behind in war countries. Especially in cases where unaccompanied children are left behind, the sponsor in the Netherlands will be more focused on staying in touch with them than integrating in the Netherlands. As one of the respondents, a Burundian refugee whose family reunification process with her five children took more than four years explained:

‘I came as a young and healthy woman and now I am a wreck.’

Additionally to the psychological strain for the families, some individual respondents and lawyers pointed out that the relationship between the sponsor and the migrant family member came under pressure due to the long duration of the procedure. Family members abroad often did not understand why it took so long and sometimes blamed the sponsor. In the case of a Burundian refugee, the oldest daughter still blames her for the long time they were separated. Other studies have also demonstrated the tensions that may occur within families as a consequence of immigration procedures (Staring 2001, Van Walsum 2000).

Although some of the respondents were supported by families and friends (e.g. a father who signs a guarantee, parents who take in a couple, helping to collect information) others said they had received no support at all. They explained that family and friends often did not understand why it could be so difficult bringing over a partner once one was married. This lack of understanding by family and friends was described earlier and made people feel isolated and alone with their problems (De Hart 2003).

Finally, it is relevant to point out that negative experiences of family reunification policies and immigration authorities may have an impact on the sense of belonging, which is vital to integration. Yuval-Davis (2006) has described a sense of belonging as emotional attachment to the country of residence, feeling at home, safe and secure.

The interviews gave several indications of the detrimental effect of family reunification policy on this sense of belonging. First of all, some of the respondents indicat-
ed that they felt offended by a discourse and requirements that, in their view, were meant to ‘keep so-called futureless migrants out of the Netherlands’, although sponsors did not see their partners as ‘futureless’. In contrast, many of them were highly skilled and were very motivated to work in the Netherlands.

According to a Dutch sponsor who reunited with her Venezuelan husband in Belgium, her husband quickly found a job in Belgium and he integrated very well. She found it offensive to sponsors and family migrants if family migrants were labelled as ‘hopeless’ in advance, and family members might not feel welcome.

According to some sponsors, the long procedure also had a negative effect on the motivation of the family migrant to integrate. A Dutch sponsor said that the strict requirements meant that her husband from Ecuador felt less inclined to come to the Netherlands, as he felt unwanted. A Dutch-Turkish sponsor explained that her Turkish husband, whose reunification process with his wife took more than one and a half years and whose baby was born in the meantime in his absence, did not feel welcome at all in the Netherlands. But she also explained that she herself, did not feel welcome any longer, feeling ‘kicked out of the country.’ Hence, the sense of belonging of the sponsors already residing in the country was also affected negatively, as several interviews demonstrated. Most Dutch nationals had not expected that it would be so difficult to reunite with a migrant partner.

A young Dutch sponsor, who ultimately reunited with her husband in another EU country said:

‘You feel so lost; also by the Netherlands. Why is this, I am a good citizen, I do everything as I am supposed to do. I am less proud of the Netherlands because of the difficult family reunification procedure. When I will move to (EU-country), I would love to obtain the nationality. If the Netherlands do not want me here, I will go away.’

Another female sponsor said:

‘I may not apply for family reunification in the Netherlands anymore, we are going to live elsewhere. It is not that I do not care, I have my family and friends here. They want young people and they need teachers. Well, I am both and I am going to leave the Netherlands.’

A Dutch male sponsor, looking back at a complicated procedure to bring his wife over, explained:

‘I have the feeling that I do not want to be in the Netherlands anymore, I do not want to live here anymore.’

Earlier research has demonstrated similar processes. Van Walsum found in her study on the experience of Dutch-Surinamese sponsors that they felt disadvantaged and not treated as equal Dutch citizens, because of restrictive family reunification policies (Van Walsum 2000: 259). De Hart concluded that a process of ‘alienation’ occurred
among Dutch women with a migrant partner because of restrictive immigration policies, which also made them feel treated as less equal Dutch citizens (De Hart 2003). Since these studies, mainly covering the migration policies of the 1990s, were published, family migration policies have become much more restrictive and the effects on integration, we suggest, more profound.

7.3 Conclusion

Although almost everybody interviewed underscored the importance of Dutch language proficiency and knowledge of society, the effectiveness of testing this in an examination before admission was criticized in several studies and by our respondents. Other conditions for admission, such as the income requirement, may hinder integration, because the labour market position deteriorates or studies are discontinued. The socioeconomic position may also be influenced negatively by the high cost of the admission procedure.

The introduction of the integration requirement for the permanent and independent residence permit (one has to pass the integration and language test on level A2) turns out to be a hindrance for family members to obtaining a stronger residence right. Since introduction, the number of applications for permanent residence permits has halved. This means that more family members remain longer in the weaker position of temporary residence. The most important difference is that the security of residence is strengthened by granting a permanent residence permit, as some withdrawal grounds can no longer be applied. This difference becomes even more important since the Rutte II Cabinet has announced that it will apply these withdrawal grounds more often. It can be expected that family members who know their future lies in the Netherlands will make a more personal investment in Dutch society. This security as a condition for integration is of special importance for the family members of refugees. Their temporary permit can be withdrawn if the general situation in their country of origin improves, a situation which they cannot influence themselves. Family members who suffer from trauma because of their experiences in their country, will have a better chance of overcoming these and developing a position and relationships in Dutch society if they no longer have to fear being returned to their country of origin.

As was demonstrated in chapter 6, several of the requirements for family reunification have led to a drop in the number of applications for family reunification, to long procedures and to postponement of the reunification. In order to answer the question in what way these consequences affect the integration of the family members, we have to involve findings of empirical research (our own findings and those from previously conducted research). This research shows that during the family reunification procedure the sponsor is not completely focused on Dutch society, but more on the admission procedure and separation from his or her family members. Hence, integration moves forward once the family is reunited in the Netherlands.

We have also seen that the length and insecurity of the admission procedure result in health issues and tensions within families. This may negatively affect people’s ability to integrate, work, follow Dutch courses etc. Finally, we have found that the
family reunification procedure may negatively affect the sense of belonging to Dutch society of both the family migrant and the sponsor. This lacking sense of belonging may continue as it becomes more difficult to change a temporary residence permit into an independent and permanent one.
Chapter 8
Conclusions

Restrictive trend

While the right to family reunification for third country nationals in the European Union has been improved in the past ten years, the Netherlands has limited this right in the same period. The main restrictions concern a stricter income requirement, the introduction of the pre-entry test, the rise in the age-limit for spouses and more procedural and financial thresholds, for instance with regard to fees and visas. With the most recent restrictions, the abolition of the right to reunification with the extended family and restricted access to an independent residence permit, Dutch family reunification policy has almost reached the minimum level of the Family Reunification Directive. Nevertheless the Rutte II Cabinet, installed in October 2012, has announced that it will prohibit reunification with foster children and continue the Dutch lobby for amending the directive into a more permissive instrument.

The same contradiction can be seen with regard to the application of the procedures. In the course of the last ten years, the processing of applications has been centralized at national level. This had led to more adequate processing, recently furthered by the fine for the authorities if they exceed the legal time-limit. On the other hand, the centralization has made it more difficult for applicants and lawyers to communicate with the decision makers. The limited discretion of officials, largely viewed as contributing to equal treatment and legal security, seems to lead, in practice, to a rigid application of the requirements. Immigration authorities do not seem to take individual circumstances into account (at least this does not become manifest in the decisions). This development does not correspond with the obligation EU law imposes on the Member States to take individual circumstances and interests into account. At the same time however, more and more attention is paid to specific applications in order to tackle fraud, which has led to a rather general attitude of mistrust.

Different treatment

The fragmentation of the family reunification rules reveal that over the last 12 years, successive governments in the Netherlands have shown a preference for restricting the right to family reunification. In the beginning of this century, some improvements were made to improve the position of dependent spouses, like the abolition of the income requirement for an independent permit and the entitlement to an independence residence permit after death of the sponsor. Since then however, liberalization has only been derived from European obligations to specific groups or from the need for highly skilled workers. The restrictive trend for Dutch nationals and most TCNs
has further widened the gap in the right to family reunification between these groups and Union citizens exercising their right to freedom of movement. This result contradicts the aim the European leaders formulated at their Tampere Conference in 1999, to approximate the legal position of Union citizens and third country nationals by strengthening the legal rights of the latter. At the same meeting, the Member States acknowledged that strong legal rights for third country nationals, including the right to family reunification, promoted their integration into their host societies. Nevertheless, the Family Reunification Directive, adopted with this objective, has not prevented the restrictive trend in the Netherlands. The application of optional clauses in order to weaken the right to family reunification reveals a shift in the way family reunification is perceived, from a chance to integrate migrants to a threat to social cohesion and integration. At the same time, case law and enforced adjustments of the admission criteria have demonstrated that the directive still serves as a safeguard against a too rigid or restrictive policy, as it sets limits to what Member States can do. The protection of TCNs at the EU level places own nationals in an awkward position, being the only group left that solely falls within the scope of Article 8 ECHR and national law. While in 2000 the Commission proposed to equalize their right to family reunification with the right of Union citizens with mobility rights, the Dutch government promotes equalizing the right to family reunification of all Union citizens with TCN family members at the level of the Family Reunification Directive.

Selection

In view of the statistics, we have to conclude that the introduction of restrictive measures, like the increase in the income requirement in 2004 for many categories and the pre-entry test in 2006, have led to a drop in the number of applications. Some researchers have attributed this decrease to a form of self-selection: sponsors and family members who know that they are unable to meet the criteria no longer apply for family reunification or, considering the gradual recovery of the numbers, postpone the family reunification.

In chapter 6, we came to the conclusion that the most vulnerable groups have the most difficulty reuniting with their family: older, illiterate or low educated family members, nationals from certain countries and female sponsors. The income requirement and the pre-entry test are the main obstacles. Thus, although the conditions are formulated neutrally, their impact is not neutral. Possible selective effects have not been taken into account in the making of the policy, for instance by impact assessments. The effects emerging in evaluations of the rules have not served as an incentive for governments to adjust their policy. This makes us wonder whether these selective effects are intended. At least, politicians and policy makers seem to respond indifferently to these results.

Because of the limited scope of the empirical part of the IFCAP research, most of the respondents who participated had met the admission requirements. However,
the statistics and other studies show that if the family members do not meet the requirements, they lack the ability to find alternative strategies which enable them to live together. In a minority of cases, people move to the country of origin of the foreign partner or to another EU Member State. Unlike TCNs, Dutch nationals can benefit from the EU rules on free movement, and thus appeal to the more favourable rules for family reunification. However, moving abroad and finding a job there is not an option for everyone; again the most vulnerable groups will have fewer opportunities for applying this strategy. Research has revealed that not many Dutch nationals apply this ‘Europe route’ (see also Regioplan 2009b).

On hold

Respondents often described their lives during the application procedure as being on hold. The health issues and tensions within the families, which derived from the lengthy and insecure admission procedure, are also likely to intensify after arrival in the Netherlands. As the residence right of the admitted family member remains dependent on meeting the admission conditions, sponsors and family members keep on adjusting their lives in order to secure their family life (see also Strasser et al. 2009). This situation is maintained for at least five years, affecting both the family member and the sponsor, as well as the relationship between them. The dependence and insecurity during the period between application for family reunification and the granting of permanent residence rights, may negatively affect people’s ability to integrate, work, follow Dutch courses etc. This effect contrasts with the situation of Union citizens: as the policy on this group is designed not to create any obstacle to free movement, Union citizens are freer to make choices in life. Their rights are adjusted to these choices, whereas TCNs and Dutch nationals are forced to adjust their choices to their rights. As we have found limited information on these effects, because most of our respondents were still in the process of admittance or had only recently arrived in the Netherlands, we suggest that more research into this topic is required.

Integration?

An important question for this project was to what extent the family reunification rules promoted or hindered the integration of sponsors and their families. The evidence is that the answer to this question is very difficult to measure, as the integration process takes a long time and is determined by many factors, like the economic situation in the host country, the absence or existence of discrimination, especially within the labour market, more general policies like education, and the personal background of the people concerned. However, we are able to conclude that the restrictive measures on the admission and residence of family members have not furthered integration in a significant way and in many cases may have actually impeded it. Being excluded means, in any case, that integration is not promoted. The stress and costs involved in the procedure negatively affect the situation of the sponsor in the Netherlands, as well as the family waiting abroad. Delay in the process means that the family
members live separately, and thus, focus on the process and not on the host society. Research suggests that these processes not only affect the couple (sponsor and spouse), but also their children (Dreby 2012). These conclusions contrast with the objective of integration, formally used by governments to introduce restrictive family reunification and residence rights.
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Significant 2012b

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Van Oers 2013

Van Walsum 2008

Van Walsum 2000

Van Walsum 1992

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WRR 2001

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Appendix: Table of respondents

While acquiring individual respondents, the Centre for Migration Law aimed to interview respondents with different backgrounds and characteristics, such as the country of origin, age, male and female, refugees and regular migrants, but also the stage of their family reunification procedure. Some hadn’t yet applied for family reunification, some were still in the application process, some respondents had their application been refused, and some of them were already reunited with their family.
Table 1 Sponsors and family members participating in the research

<table>
<thead>
<tr>
<th>Participant</th>
<th>Nationality of interview partner</th>
<th>Sponsor or family member?</th>
<th>Nationality of partner</th>
<th>Residence status of sponsor</th>
<th>Category of family member(s)</th>
<th>Gender of sponsor</th>
<th>Gender of family member(s)</th>
<th>Status of family reunification</th>
<th>Family reunification or formation</th>
</tr>
</thead>
<tbody>
<tr>
<td>P1</td>
<td>Dutch</td>
<td>Sponsor</td>
<td>Chinese</td>
<td>Dutch citizen</td>
<td>Spouse</td>
<td>Male</td>
<td>Female</td>
<td>Granted (family member of EU citizen)</td>
<td>Family formation</td>
</tr>
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<td>P2</td>
<td>Dutch</td>
<td>Sponsor</td>
<td>Ugandan</td>
<td>Dutch citizen</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Not yet applied</td>
<td>Family reunification</td>
</tr>
<tr>
<td>P3</td>
<td>Dutch</td>
<td>Sponsor</td>
<td>Venezuelan</td>
<td>Dutch citizen, currently living in another EU Member State</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Granted (family member of EU citizen)</td>
<td>Family reunification</td>
</tr>
<tr>
<td>P4</td>
<td>Dutch</td>
<td>Sponsor</td>
<td>Tunisian</td>
<td>Dutch citizen</td>
<td>Partner</td>
<td>Female</td>
<td>Male</td>
<td>Granted (temporary residence permit for the purpose of family reunification)</td>
<td>Family formation</td>
</tr>
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<td>P5</td>
<td>Dutch</td>
<td>Sponsor</td>
<td>Ecuadorian</td>
<td>Dutch citizen</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Not yet applied</td>
<td>Family reunification</td>
</tr>
<tr>
<td>P6</td>
<td>Dutch</td>
<td>Sponsor</td>
<td>Thai</td>
<td>Dutch citizen</td>
<td>Spouse + 3 children (2 Thai and 1 Dutch)</td>
<td>Male</td>
<td>Female, gender of children unknown</td>
<td>In application procedure for long-term visa</td>
<td>Family formation</td>
</tr>
</tbody>
</table>

232 P = participant (e.g. P1 = participant 1).
<table>
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<th>Sponsor</th>
<th>Serbian</th>
<th>Dutch citizen</th>
<th>Partner</th>
<th>Female</th>
<th>Male</th>
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<th>Family formation</th>
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<td>P7</td>
<td>Serbian</td>
<td>Family Member</td>
<td>Dutch</td>
<td>Dutch citizen</td>
<td>Partner</td>
<td>Female</td>
<td>Male</td>
<td>Granted (temporary residence permit for the purpose of family reunification)</td>
<td>Family formation</td>
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<tr>
<td>P8</td>
<td>Dutch</td>
<td>Sponsor</td>
<td>Peruvian</td>
<td>Dutch citizen</td>
<td>Partner</td>
<td>Female</td>
<td>Male</td>
<td>Granted (family member of EU citizen)</td>
<td>Family reunification</td>
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<tr>
<td>P9</td>
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<td>Tunisian</td>
<td>Dutch citizen</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Refused (advisory request for long-term visa)</td>
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</tr>
<tr>
<td>P10</td>
<td>Dutch</td>
<td>Sponsor</td>
<td>Chinese</td>
<td>Dutch citizen</td>
<td>Spouse</td>
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<td>Female</td>
<td>Granted (temporary residence permit for the purpose of family reunification)</td>
<td>Family formation</td>
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<tr>
<td>P11</td>
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<td>Dutch citizen</td>
<td>Spouse</td>
<td>Male</td>
<td>Female</td>
<td>Granted (temporary residence permit for the purpose of family reunification)</td>
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<td>Turkish</td>
<td>Dutch citizen</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Granted (temporary residence permit for the purpose of family reunification)</td>
<td>Family reunification</td>
</tr>
<tr>
<td>-----</td>
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<td>P14</td>
<td>Turkish</td>
<td>Family Member</td>
<td>Dutch</td>
<td>Dutch citizen</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Granted (temporary residence permit for the purpose of family reunification)</td>
<td>Family reunification</td>
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<tr>
<td>P15</td>
<td>Turkish</td>
<td>Sponsor</td>
<td>Turkish</td>
<td>Permanent residence permit</td>
<td>Partner</td>
<td>Female</td>
<td>Male</td>
<td>Not yet applied</td>
<td>Family formation</td>
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<td>Moroccan/Dutch</td>
<td>Sponsor</td>
<td>Moroccan</td>
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<td>Spouse</td>
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<td>Male</td>
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<tr>
<td>P17 (FG 1)</td>
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<td>Burundi</td>
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233 FG = focus group
Table 2 NGO representatives and legal practitioners participating in the research

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<th>Target groups</th>
<th>Function</th>
<th>Kind of interview</th>
<th>Years of experience in family reunification</th>
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<tr>
<td>FGP1</td>
<td>Binnur Bergholz-Zengin</td>
<td>Türkmen in Nederland (IOT)</td>
<td>Secretary general, advisor</td>
<td>Focus group 2</td>
<td>&gt; 20 years</td>
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<td>FGP2</td>
<td>Mopje Mechters</td>
<td>Melchers Advocaat</td>
<td>Lawyer</td>
<td>Focus group 2</td>
<td>21 years</td>
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<td>FGP3</td>
<td>Huib Drenth</td>
<td>Advocatenkantoor De Leon</td>
<td>Lawyer</td>
<td>Focus group 2</td>
<td>6 years</td>
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<td>FGP4</td>
<td>Henrije Schurink-Smit</td>
<td>Van Schie Advocaten</td>
<td>Lawyer</td>
<td>Focus group 3</td>
<td>2 years</td>
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<td>FGP5</td>
<td>Sandra van Tweel</td>
<td>VluchtelingenWerk Nijmegen</td>
<td>Legal advisor</td>
<td>Focus group 3</td>
<td>5 years</td>
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<tr>
<td>FGP6</td>
<td>William Hendriks</td>
<td>Stichting Het Inter-Lokaal</td>
<td>Legal advisor</td>
<td>Focus group 3</td>
<td>12 years</td>
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<td>FGP7</td>
<td>Hans Jager</td>
<td>Everaert Advocaten</td>
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<td>Focus group 4</td>
<td>30 years</td>
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<td>FGP8</td>
<td>Barbara Wegelin</td>
<td>Everaert Advocaten</td>
<td>Lawyer</td>
<td>Focus group 4</td>
<td>5 years</td>
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<tr>
<td>FGP9</td>
<td>Vera Kidjan</td>
<td>Everaert Advocaten</td>
<td>Lawyer</td>
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<td>15 years</td>
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Table 3 Public officials participating in the research

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<th>Name of organisation</th>
<th>Function / Position</th>
<th>Kind of interview</th>
<th>Years of experience in family reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>PP1</td>
<td>anonymised</td>
<td>Ministry of Interior Directorate General Migration</td>
<td>Policy advisor</td>
<td>focus group with pp2</td>
</tr>
<tr>
<td>PP2</td>
<td>anonymised</td>
<td>Ministry of Interior, Directorate General Migration</td>
<td>Policy advisor</td>
<td>Focus group with pp2</td>
</tr>
<tr>
<td>PP3</td>
<td>anonymised</td>
<td>Ministry of Interior, Directorate General Integration</td>
<td>Policy advisor</td>
<td>Individual interview</td>
</tr>
</tbody>
</table>

Besides the interviews that were conducted within the framework of this research, all relevant data from other research studies, both quantitative and qualitative were col-

234 FGP = focus group participant (e.g. FGP1 = focus group participant 1).
235 PP = public participant (e.g. PP1 = public participant 1).
lected and analysed. A mixed-methods approach was adopted for this report, incorporating elements of both quantitative and qualitative research. The following sources of data and information were used:

- Desk research: study of literature, legislation, case law and policy documents
- Statistical data obtained from Statistics Netherlands (Centraal Bureau voor de Statistiek (CBS)), INDIS (IND Information System), WODC (Research Centre allied with Ministry of Justice) and organizations which conducted evaluations (commissioned by the government)