

***Dutch policy on labour migration of citizens of European Union
(policy proposal as presented by minister H. Kamp
in the letter to the Parliament of 14 April 2011)***

Polish comments

General remarks:

1. The letter sent to the Dutch parliament by minister Henk Kamp on the 14th April 2011 entitled *Actions: labour migration from Central and Eastern Europe* is particularly important for Poland, as the measures proposed would concern Polish citizens given the recent scale of Polish immigration to the Netherlands.
2. We understand the Dutch authorities' focus on migration from Central and Eastern European countries, especially in a situation where the amount of migrants has exceeded earlier expectations. However, it should be noted that the high number of migrants (around 0.5% of the population, according to Dutch statistics) is the result of very high demand for migrant workers.
3. We welcome the paper's acknowledgment of the benefits of the free movement of workers, its broadly accurate diagnosis of the problems, its comprehensive approach to the subject and the variety of initiatives it proposes.
4. However, the document is very general in describing the scale of certain negative phenomena. Terms that unnecessarily create or bolster stereotypes or stigmatise EU citizens from Central and Eastern Europe should be avoided in public discussions. It is therefore essential to indicate the extent of the problem: the proportion of migrants causing problems and the scale of the problem in relation to the same behaviour among the Dutch population. The document should not create the impression that the majority of migrants engage in problematic behaviour. It is also

more appropriate to state that migrant workers are ‘subject’ rather than ‘prone’ (Dutch: *vatbaar*) to exploitation, unfair competition and bad accommodation.

5. We share the view presented in the letter that labour migration from CEE countries has a positive impact on the Dutch economy and labour market, but also a negative one, due to certain problems associated with the newcomers’ integration into Dutch society and the fact that some were not adequately prepared for their stay in the Netherlands. This has led to their social exclusion and an inability to regain mental and economic stability, which in turn has led to various problems in Dutch society.
6. However, we have concerns regarding the general policy line behind the proposed measures and the wording of the letter. The document contains a list of measures that seem to be aimed at limiting economic immigration from CEE countries. Some of the assumptions and proposals raise serious misgivings.
7. From the Polish point of view, any discussion of the document presented by the government of the Netherlands should begin with the fundamental question of its purpose and nature.
8. We consider controversial the letter’s key message. In our opinion, the expression “*to put labour migration from Central and Eastern Europe back on the right track*” (Dutch: *in goede banen te leiden*) is discriminatory and undermines the principle of equal treatment of EU citizens regardless their nationality.
9. The authors claim that immigrants are taking up jobs that were supposed to be filled by Dutch nationals (“It is unacceptable that in our country hundreds of thousands of people who can work are on benefits, whilst more and more migrant workers are recruited to do jobs for which supposedly no Dutch workers can be found”; “We are dealing here with a demand for labour, for which there should be enough domestic supply”). In our view such statements are discriminatory and should be avoided.

10. It must be emphasised that the free movement of persons is crucial for the proper functioning of the European Union. Any attempts to limit it are contrary to the idea of European integration, and would have an adverse effect on the whole EU.
11. We are worried that the Dutch proposal to tighten and extend the integration policy for workers from EU Member States makes them equivalent to citizens of third countries. Placing EU citizens who enjoy the right to free movement within the EU (including Polish migrant workers) into the framework of the European integration policy for citizens of third countries is inconceivable.
12. As regards the specific proposals, we share the Dutch view that migrants are obliged by law to fulfil their obligations towards their host country by registering their stay. In our opinion, the conditions for registration should be based on the relevant provisions of the 2004/38/EC directive. Moreover, immigrants should have the right to appeal in the event that it is decided they lack the grounds for legal residency. Such a provision does not seem to be envisaged in the Dutch paper.
13. The Dutch government rightly points out in the initial position that the key issue is to protect migrant workers against the possibility of exploitation by employers and/or their intermediaries. A closer look at the specific proposals, however, shows that while firm and restrictive measures are preferred in relation to migrant workers, in relation to many employers, intermediaries and other institutions (e.g. Netherlands Bankers' Association) solutions are more often based solely on voluntary commitments.
14. Meanwhile, experience from various countries clearly indicates that the most effective measures for preventing the exploitation of workers are those which are directed against dishonest employers and intermediaries. This is due to the generally weaker position of employees, particularly migrants, their ignorance of local conditions and the often high level of acceptance of adverse conditions of contracts by migrant workers in the hope of expected earnings.

15. We do not support launching a discussion on introducing changes to the 2004/38/EC directive. In our view, the 2009 European Commission report clearly stated that the provisions of the directive are properly formulated and that they ensure the goals of the directive are attained when correctly applied.
16. We therefore see no need to amend the provisions of the 2004/38/EC directive. However, it seems reasonable to establish the precise method of their application, which would be adapted to the respective social characteristics of the Member States.
17. In our opinion, one cannot speak of 'abusive cases' with regard to the unexpected number of immigrants coming from CEE countries, as is suggested in the letter. According to our understanding of this term, such cases are clearly described in the 2004/38/EC directive.
18. According to the provisions of the 2004/38/EC directive, the expulsion of EU citizens from Member States other than their own cannot be done for economic reasons. Expulsion cannot become an instrument for solving economic and social crises. The only legal and justifiable grounds for the expulsion of EU citizens, also accepted by Poland, are public policy, public security and public health. This position was already presented during the preparatory works of the COM guidelines and at various expert and ministerial meetings, including those conducted between Poland and the Netherlands.
19. In our opinion, it would be appropriate to begin by implementing the measures proposed by the Dutch government into the national legislation and then, depending on the results, to make any relevant proposals for the modification of EU regulations. It must be determined whether the proposed Dutch regulations will contribute to the improvement of the situation: if they do, the modification of the European regulations will be unnecessary.

20. In addition to these general observations, it is important to point out some specific proposals that we believe are not appropriate when addressing these issues. Below are the Polish suggestions for certain solutions.

Specific remarks:

Introduction

The statement *“the talks we had with representatives of CEE countries have in part helped to lay the foundation of the actions that follow below”* (Dutch: *Het kabinet heeft met vertegenwoordigers van een aantal MOE-landen gesproken, in het bijzonder met die van Polen*) must not be read as approval for all the measures proposed. For example, the Polish side voiced its disapproval for the Dutch plan to connect the cancellation of residence permits or even the expulsion of Poles with the fact that they make use of social benefits or homeless shelters.

Chapter 3. Entry into the Netherlands: information and registration

It is important to understand the factors that make registration difficult or impossible for migrants. From paragraph **Registration** on page 4, one could conclude that Poles are unwilling to register. To our knowledge, this is mainly due to the actions of temporary work agencies. Workers do not register when they are housed in places without an address (camping) or hotels. Once they are accommodated in overcrowded apartments or places not designed for accommodation, the temporary work agencies are loath to register them and disclose their living conditions. Another reason for non-registration is the fact that temporary work agencies usually give their workers contracts for 3 months or less, which allows them not to register their employees. Therefore, the temporary work agencies must be held responsible for the non-registration of CEE citizens. Otherwise, the false perception might arise that the workers themselves are the only ‘culprits’ and only they should be punished for not fulfilling their legal obligations.

The Dutch proposal stipulates that the INS (Integration and Naturalisation Services) will check whether a worker meets the conditions of stay, such as the possession of enough disposable income. If this income is insufficient, the worker may lose the right to stay in the Netherlands. It can be assumed a ‘sufficient income’ would be one that exceeds the

threshold for use of the social welfare system. Consequently, migrant workers underpaid by Dutch employers would be further penalised by losing their right to reside in the Netherlands.

It should be noted that such a solution would be a means of discouraging underpaid migrant workers from registering (and therefore would be counterproductive).

It should also be noted that, in accordance with the provisions of Article 7.1.1 of Directive 2004/38/EC, the right to stay for more than 3 months is ensured for migrant workers and the self-employed (excluding persons engaged in activities of marginal importance), regardless of their income level. The requirement to have sufficient *resources* (as opposed to *income*) not to become a burden on the welfare system applies only to economically inactive people or students. Indeed, these rules are mentioned on page 13 of the Non-paper. In our opinion for these reasons the proposal to cancel the right to stay due to income level is contrary to EU law.

Recognising the importance of this issue, we would suggest the Dutch authorities consider another solution. Namely: if the INS had the competence to check the level of income of migrant workers, in case of very low income it would check that the employer is complying with rules on minimum wage. If not, the employer should be made to pay a penalty and compensation at least to the level of minimum wage.

Chapter 4. Work

The section titled *Signals indicating abuse (Signalen over misstanden van arbeidsmigranten)* and *Sharing information (Gegevensuitwisseling)* should contain information about the activities of information hotlines and information centres providing advice and information in Polish, run by trade unions, municipalities or Polish organisations, and staffed by Poles. These information providers are a good source of information for Polish citizens experiencing difficulties with work and housing. Apart from providing migrants with the possibility to report abuses in their native language to other institutions, a 0900-2700000 telephone number should be set up, which functions in the most prevalent languages among migrants.

The ability of the Dutch proposals to better control the activity of the temporary work agencies and put the exploitation of Polish workers to an end should be closely analysed

and monitored. Only strict certification and obligatory registration in the Chambers of Commerce can give some guarantee of eliminating malpractice.

The proposed actions are primarily directed against ‘dishonest’ temporary work agencies. According to our information, agencies that have certificates and theoretically adhere to the NEN-4400 norm also quite often act unlawfully.

As regards the proposal to make possible the closure of enterprises that persist in violating labour laws, we would suggest the Dutch authorities consider banning persons engaged in *mala fide* agencies from establishing other temporary work agencies for a certain amount of time.

In addition, we would suggest considering publishing a list of the temporary employment agencies that satisfy the certification conditions on-line. This would enable potential employees to avoid trouble and would be an incentive for employers to comply with certification obligations. In our opinion, the responsibility of employers should be heightened. Currently, the employer can be required to pay the employee part of the owed wages. In our opinion, this measure should be mandatory. This would establish mechanisms of mutual control between agencies and their employers.

With regard to the proposal on counteracting the phenomenon of undercutting wages, it would be appropriate to indicate what percentage of wages can be deducted by employers to cover various costs (including penalties for the violation of the rules of procedure).

Chapter 5. Social services, care and social support facilities

We are concerned by the announcement that the right of residence in the Netherlands will be withdrawn from EU citizens the moment they apply for social benefits. This represents a significant change in practice and in the interpretation of internal Dutch regulations on social benefits. The proposal contains an element of automatic action and suggests a generalised approach, without taking into account personal circumstances. It is contrary to existing EU regulations.

Regarding the requirement for employees to pay healthcare insurance premiums, it should be reiterated that the Polish Embassy in The Hague gathers that non-payment is

down to the temporary work agencies, which do not inform workers of their duty to pay the premiums (in Poland it is the obligation of the employer). There are cases where the temporary work agencies collect the money from the employees to cover the mandatory health premiums but do not buy the insurance. There have also been cases of the temporary work agencies prompting their employees to apply for social benefits after working a few 3-month contracts.

The proposal to link the right to social benefits to knowledge of the Dutch language is not justified under EU regulations.

Chapter 6. Housing

This chapter diagnoses the problem correctly and accurately identifies the main sources of migrant workers' housing irregularities. The measures proposed should improve the availability of accommodation that meets the norms set by the Dutch authorities.

However, it is important to deal with a certain 'source' of homeless workers: sanctions against workers whose accommodation does not comply with the rules and norms set by the Dutch authorities (living in accommodation that is not intended for permanent stay or is overcrowded). In the case of a violation, the Dutch inspectors naturally make the landlord liable, but also the tenants, often placed there by the temporary work agencies, which impose housing on employees. The outcome of such inspections is often eviction, and a temporary state of homelessness (if the temporary work agency fails to house the tenants elsewhere).

In many cases, contracts specify the housing workers will receive and the amount that is to be deducted from their salary as rent. The employees have practically no choice in the matter and have to agree to the conditions set out in the contract.

The document claims local authorities have sufficient legal means to combat such irregularities on the housing market. The Polish Embassy in The Hague is often informed by the municipalities that they do not have the tools necessary to put pressure on landlords who accommodate migrant workers in improper conditions. Local authorities should be given the right to check housing conditions, impose fines and/or create a mechanism for giving formal permits for housing to be made available for housing contracts with temporary work agencies.

Chapter 7. Civic integration

It is worth mentioning that the vast majority of migrant workers from Poland work in the Netherlands on a temporary basis, employed by temporary work agencies (a fact that is acknowledged in the document). This should be taken into account when assessing the need and ability of migrant workers to learn Dutch, especially given their usual workload.

Two very significant aspects of this issue should also be taken into account. First, persons who speak Dutch have a tendency to stay in the Netherlands for longer periods of time or even permanently. The government of the Netherlands should bear this in mind while promoting the intensive integration of migrant workers.

Second, persons who for whatever reason choose to stay in the Netherlands have a tendency to both master the language and integrate with the society around them. The long-term experience of Polish migration to other European countries and the U.S. has shown this to be true: already in the first generation, Polish migrants are perfectly integrated with the local communities and have no communication problems. There are no grounds for claiming that this would look any different in the case of the Netherlands.

Concerning the ‘**Education**’ section: the school curriculum lacks modules on the culture and traditions of CEE countries and their education systems. Workshops on the subject should be organised for Dutch teachers.

Chapter 8. Cancellation of residence and return

The proposals concerning the right to reside for jobseekers, those in employment and the unemployed seek to limit the right to reside for those who risk applying for social benefits. In practice the procedure is likely to become tougher. In the case of ‘non actives’ or persons who abuse the welfare system, it is necessary – in the event of expulsion – to apply the procedure set out in Directive 2004/38/WE (Art. 14 and 15). This is not mentioned in the document.

The document includes information concerning the possibility to expel EU citizens who commit more than one criminal act. It also states that those persons should be regarded

as *persona non grata* and consequently expelled from the Netherlands. This position is unacceptable under Directive 2004/38/EC. Indeed, the Directive provides a closed catalogue of instances when such expulsions are legitimate in accordance with the relevant procedural guarantees – e.g. public order, safety, public health or an unjustified burden on the welfare system. Thus the mere fact of committing more than one criminal act is not a justified and legitimate reason for initiating the expulsion of individual EU citizens. Therefore, we are of the opinion that this proposal should be regarded as void and be withdrawn. If introduced, it would constitute the breach of existing EU law.