

17. The Netherlands

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The main regulatory framework for foreigners' rights and duties, for admission, stay and residence, and for permits related to the performance of work, study or other visits is formulated in the Aliens Act 2000. The second basic act is the Foreign National Employment Act 1994. Immigration of third-country nationals is almost exclusively on the initiative of employers. Recruitment is meant as a last resort; a work permit will be refused if there is sufficient labour present on the labour market. The country applies its own points and wage based system for high-skilled workers. Available data suggest that relatively few third-country nationals come for work purposes.

Box 1 Summary of the immigration regime and how it interacts with labour law

The Foreign National Employment Act requires that an employer obtains a valid work permit for all foreign workers. Such work permits are not required for employees from a country within the EU/EEA or Switzerland. As a general rule, persons (EU/EEA citizens and third-country nationals) working and residing in the Netherlands are treated with regard to pay and working conditions in the same way as resident Dutch nationals. If restrictions are specified – for instance, years of service or waiting periods – they apply equally to nationals and foreign workers. Recognition of diplomas is not guaranteed for third-country nationals, while comparable diplomas of EU citizens are recognised. Some collective agreements stipulate special provisions (for housing, travel or medical expenses) for workers not living permanently in the Netherlands. All employees are entitled to the statutory minimum wage that consists of a basic wage and a number of allowances, such as for shift work and irregular working hours. Also posted workers are covered, based on transposition of the EU Directive. Some income components, such as overtime pay or expenses and end-of-year allowances, are not included in the calculation of the minimum wage. For younger workers (below 21 years of age) a sliding scale of mandatory minimum wages applies.

Table 1.17 Overview of the link between immigration regime and labour market rights

Immigration regime	Period of validity	Allowed to work?	Multiple employers possible?	Need employment contract to enter?	Dismissal entails loss of residence?
Highly skilled workers/points and wage based national system	For duration of contract	Yes	No, although change of contract is possible, if wage threshold is respected	A valid employment contract of more than three months with a Dutch employer that complies with the wage threshold	Withdrawal of work permit means loss of right to stay. Departure period is determined on a case-by-case basis. The standard period is 4 weeks (28 days). Failure to comply means repatriation
Work in paid employment via 'sponsorship'	For duration of contract	Yes	No	a) Workers must have a valid residence permit that includes the phrase 'Employment is freely permitted. Employment permit not required'; b) they must hold a valid passport with an officially accepted sticker for residence remarks, and which includes the remark 'Work is freely permitted. Work permit not required'; c) the employer has a valid work permit for the foreign worker concerned	Withdrawal of work permit means loss of right to stay. The departure period is determined on a case-by-case basis. The standard period is 4 weeks (28 days). Failure to comply means repatriation
Posting (including temporary workers)	Depending on the posting period	Yes	No	Third-country nationals posted from another Member State are exempt from the requirement to have an entry visa or to apply for a work permit	End of posting period means return to the other Member State
Family/study/asylum	Varies	Varies	Varies	No	Not applicable

Source: Author's analysis, 2022.

Box 2 Posting of third-country nationals

Posting straight from outside the EU, with no intermediate Member State, is rather rare. Third-country nationals who enter through posting do not need to apply for a Dutch work permit, if they are legally employed in one of the EU/EEA countries or Switzerland and are temporarily posted to the Netherlands. If a posting undertaking registers a third-country national, this registration must indicate the validity period of the work permit that was issued by the sending EU/EEA country. These posting undertakings are subject to the WagwEU, the Dutch implementation of the Posting of Workers Directive (1996/71/EC) and the Enforcement Directive (2014/67/EU). The lack of registration makes it difficult to provide reliable figures and to quantify the total number of third-country nationals posted to the Netherlands. The equal treatment of EU/EEA nationals and third-country nationals is meant to prevent wage dumping, undercutting the salary levels of national workers. A relatively high percentage of third-country nationals posted to neighbouring countries were originally engaged as temporary workers in the Netherlands. Large Dutch temporary work agencies use the potential 'third country labour reservoir' for their recruitment.

Box 3 Hiring temporary agency workers from third countries

In principle, it is not possible for temporary agency workers from outside the EU to enter another Member State through the ordinary free movement of workers, because their work permit is bound to the country of entry. Third-country workers who enter EU/EEA territory can be posted to another Member State within the framework of the free provision of services. For temporary agency workers posted to a Dutch user undertaking the working conditions shall apply of generally binding collective agreements to which the user undertaking is subject. Compliance control with collective agreements is a civil matter. In the temporary agency sector, the social partners created a Special Compliance Office (the SNCU) in 2004. Unions and employer organisations transferred the competence to go to court to this institution. The SNCU has set up a reporting point in several languages that gives workers the possibility to report cases of non-compliance with collective agreements.

Description of the Dutch system

1. Overview of third-country nationals on the Dutch labour market

Available data suggest that relatively few third-country nationals come for work purposes.¹ According to the European Commission, a net inflow of 33,000 citizens of working age came to the Netherlands from outside the EU/EEA in 2018. In that year, only 14.6 per cent of all third-country nationals came as high-skilled migrants and 7.4 per cent as other labour migrants. The latest data can be found in the next overview.² Short-term stays (less than four months) are not included in the data.

Third-country nationals entering the Netherlands	2016	2017	2018	2019	2020
Highly skilled	8,100	9,700	11,800	12,800	7,000
Paid work	4,400	5,200	6,000	7,600	5,000

2. Main entry regimes for short-term or limited time work

The Dutch legislator has formulated a number of general conditions that apply to all purposes of stay.³ The focus here is on the most relevant legislative provisions related to third-country labour migrants.⁴ The main regulatory framework for foreigners' rights and duties, for admission, stay and residence, and for permits related to work, study or other visits is formulated in one general act, the 2000 Aliens Act (*Vreemdelingenwet 2000*).⁵ The second basic legal act is the Foreign National Employment Act 1994 (*Wet arbeid vreemdelingen 1994, or WAV*).⁶ This act provides regulations on labour market access and the employment of third-country nationals.⁷ Both are implemented in detailed subordinated acts that describe the legal provisions and requirements. As in other EU Member States, vacancies shall in principle be filled by job-seekers from EU countries. The country has seen a large growth in active intra-EU movers from inside the EU/EEA countries.⁸ The Dutch migration policy for third-country nationals is almost exclusively at the initiative of employers (demand-driven policy). Recruitment of

1. The Netherlands belongs to the category with the lowest percentage of third-country nationals in the total population (4 per cent in 2019, European Commission 2020), with a large segment of third-country nationals originating from Morocco or Turkey.
2. <https://www.cbs.nl/nl-nl/nieuws/2021/29/vooral-minder-immigranten-van-buiten-de-eu-in-2020>
3. https://ind.nl/en/Pages/General_conditions.aspx
4. For an overview of residence permits available for work: <https://ind.nl/en/forms/3086.pdf>
5. For an English translation, visit: <http://hrlibrary.umn.edu/research/Netherlands/Alien%20Act%202000.pdf>
6. <https://wetten.overheid.nl/BWBR0007149/2018-01-01>
7. At the time of writing, a consultation concerning a revision of the WAV was running: <https://www.internetconsultatie.nl/wijzigingwetarbeidvreemdelingen/reacties>
8. However, there has been an increase in retired EU/EEA citizens and a drop in working-age inflows.

third-country nationals is meant as a last resort; a work permit will be refused if there is sufficient labour already.

For a stay of fewer than 90 days, workers need a short-stay visa. They can apply for such a visa at the Dutch embassy in the country of origin or country of continuous residence. For a longer stay (more than 90 days), workers need a residence permit. They can only obtain a residence permit for the purpose of work if they have an ensured job in the Netherlands.

The standard residence permit in the Netherlands is for paid employment. Several such permits exist with specific rules (work at a foreign company collaborating on a project or joint venture with a Dutch company; paid employment for the assembly and repair of equipment delivered by foreign companies; paid employment in the Netherlands in relation to the delivery of goods to a foreign company; work at an international group of companies and a transfer to the Netherlands as a trainee, key staff member or specialist; cultural work, journalists, work in paid employment for an international non-profit organisation in the Netherlands).

The Netherlands applies a different national policy and strategy to attract highly-skilled migrant workers. In this system, a highly-skilled worker of 30 years or above must earn a monthly wage of at least 5,008 euros (in 2023); for younger workers below 30 years of age this is 3,672 euros per month. The salary threshold is substantially lower than for the Blue Card. The scheme requires a valid employment contract of more than three months with a Dutch employer that complies with the salary threshold. It includes incentives to attract (highly) qualified migrants with controversial tax advantages (offering a tax-free salary of 30 per cent for the extra costs incurred when working in the Netherlands). Although both the migrant worker or the employer can apply, the scheme can be characterised as an employer-led approach driven by 'supply and demand': that is, the focus is on addressing labour shortages and identifying third-country nationals who can add high value to the national labour market.

3. Overview of working conditions and wage setting for third-country nationals

As a general rule, foreign persons (EU/EEA citizens and third-country nationals) working and residing in the Netherlands are treated in the same way as all other residents with regard to pay and working conditions. If specified restrictions exist – for instance, years of service or waiting periods – they apply equally to nationals and foreign workers. Recognition of diplomas is not guaranteed for third-country nationals, while comparable diplomas of EU citizens are recognised.

Some collective agreements stipulate special provisions (for housing, travel or medical expenses) for workers not living permanently in the Netherlands. Parties involved in the development of a collective agreement can ask the Minister of Social Affairs and Employment to declare the provisions of the agreed industry collective agreement generally binding for all employers or employees in the industry or sector, irrespective of nationality.

All employees are entitled to the Dutch statutory minimum wage that consists of a basic wage and a number of allowances, for example, for shift work and irregular working hours. Some income components, such as overtime pay or expenses and end-of-year allowances, are not included in the calculation of the minimum wage. For younger workers (below 21 years old) a sliding scale of mandatory minimum wages applies. This general rule applies to all workers within the territory, independent of origin or nationality. Posted workers are also covered, based on transposition of the EU Directive.

4. Special regimes

a. Third-country national seasonal workers

The Netherlands transposed the Seasonal Work Directive (2014/36/EU) in a rather neutral way. The Directive seeks to promote temporary and circular migration as a means to solve Member States' demand for low-skilled migrants, without giving the migrants falling within its scope the prospect of integration and long-term residence in a host Member State. As in Malta, Luxembourg and Germany, no third-country seasonal workers have been admitted to the Netherlands so far (there were no authorisations in the period 2017–2019). The requirements and conditions when applying for seasonal work, as well as the rights and obligations of seasonal workers are published on a government website in English and Dutch. In general, the entry and stay of seasonal workers are not part of an overall migration policy. The official policy is that the country does not rely on seasonal workers from third countries and thus does not need specific policies to attract them. The idea is that seasonal labour market demands can always be met through nationals, EU/EEA citizens and third-country nationals legally residing in the country and available on the labour market. Thus, the relevance of Directive 2014/36/EU is limited.⁹

b. Third-country national posted workers

The condition for entry through posting is that the third-country national is legally allowed to work and reside in another EU/EEA country or Switzerland. The employer must notify entry at least two days beforehand. The introduction of the notification requirement in 2019 (identical for all posted workers, whether intra-EU or third-country workers) might lead to stronger verifiability of posted work. The decision of a third-country national resident in one Member State to settle in a second Member State, even if all necessary (formal and administrative) conditions for acquiring a visa and/or residence permit have been met, is restricted by a number of measures already mentioned (activities in line with the national economic interest, evidence that the position cannot be filled by EU/EEA/EFTA nationals).

9. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/oo_eu_seasonal_workers_study_inform_en.pdf

c. Third-country national temporary agency workers

In principle, it is not possible for temporary agency workers from outside the EU to enter another Member State through the free movement of workers, because their work permit is bound to the country of entry. Once third-country workers have entered EU/EEA territory, however, they can be posted to another Member State within the framework of the free provision of services. Posted temporary third-country agency workers remain on the payroll of the foreign agency and their social security contributions are paid in the country of establishment. The management and supervision of temporary agency work is not the responsibility of the service provider (the temporary employment agency), but of the hirer (the service recipient or user undertaking). However, the temporary employment agency remains responsible for the temporary agency worker's terms of employment. For temporary agency workers posted to a Dutch user undertaking the working conditions of generally binding collective agreements shall apply that the user undertaking has to respect for its regular workforce.

5. Third-country nationals during the Covid-19 pandemic

With a residence permit, third-country nationals can obtain permission to remain abroad for a certain period of time. How long their stay outside the Netherlands can be depends on the type of residence permit. If foreign workers are unable to travel back in time to the Netherlands because of Covid-19 measures, there will be no consequences with regard to the residence permit if they can show that this was not their fault. In the pandemic, travel bans did not apply to third-country nationals who were key workers in certain well-defined sectors and occupations. If a third-country worker who was abroad could not return, for instance because a Covid-19 related entry ban applied, their employer had to report this to the IND. As part of the obligation to provide information, employers have to report changes to the IND within four weeks.

The monthly wage criterion for certain categories of highly skilled third-country nationals or for work in paid employment still applied during the Covid-19 period. It was announced that the IND would handle the situation flexibly and not revoke residence permits if people temporarily were receiving lower salaries.

6. Overview of enforcement and monitoring

In general, the Immigration and Naturalisation Service (the IND) is the competent authority for the application of third-country national entry regulations. The Dutch Equal Treatment Act guarantees protection against discrimination for all persons on Dutch territory, and equal treatment with Dutch citizens. There is little case law in this area, however. Enterprises from other EU/EEA countries or Switzerland who temporarily come to the Netherlands with posted workers within the framework of the free provision of services are subject to the WagwEU, the Dutch implementation of the Posting of Workers Directive (1996/71/EC) and the Enforcement Directive (2014/67/EU). Compliance with collective agreements is

a civil matter; in most industries this is performed by the social partners, or joint institutions established by the social partners. In the temporary agency sector, the social partners created a special compliance office (the SNCU) in 2004. Unions and employer organisations transferred the competence to take matters to court to this institution. The SNCU has set up a reporting point accessible in several languages. It gives all workers the possibility to report cases of non-application of collective agreements or to ask questions.¹⁰

10. The SNCU has uploaded a series of YouTube films to its website in several languages to inform foreign temporary agency workers about wages, working conditions and living in the Netherlands. <https://www.sncu.nl/en/working-as-a-temporary-agency-worker/>