

2023 Annual report

Netherlands Labour Authority

Reflection

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Knowledge migrant or salary migrant?

What's in a name?

To summarise

The Netherlands has a knowledge migrant scheme. That makes it easy for employers to hire people from outside the European Union. Supervisory experiences have taught us that:

1. **The name creates confusion.** Salary, much more than knowledge, drives this form of migration.
2. **The goal is outdated.** The scheme aims to encourage labour migration. That aim is certainly being met. That is because of the scheme's unfocused nature. In supervisory practice, we encounter the following knowledge migrants: hairdressers, cable layers, cleaners, steel fixers, payroll workers, hospitality workers, nail salon workers, and so on. There are also knowledge workers who turn out not to work at all, and others who work but receive little or no pay. The scheme is so unfocused that all this is possible precisely when at present a tighter grip on migration is needed. Not to mention countering exploitation. The scheme can be modernised by providing more focus. That way, the positive aspects of the scheme can be preserved and the drawbacks reduced. For example, more focus could be created by clearly defining the concept of 'high-quality knowledge' used in the scheme. That could be done in a way that – as is now the case - some 20-30% of positions in the Netherlands are no longer open to non-EU migrants. It could also be done in a way that – as is now the case - over 10,500 companies are no longer allowed to take on 'knowledge workers'. It would be realistic if a few hundred companies that actually focus on high-quality knowledge were allowed to do so.

3. **No balance between rights and obligations.** The right to reside and work in the Netherlands is self-evident for Dutch citizens. However, it is a valuable and coveted privilege for people from outside the EU. The value of the right to live and work in the EU varies for people outside the EU from thousands to tens of thousands to hundreds of thousands of euros. That encourages abuse and the misuse of the knowledge migrant scheme. It tempts fate. However, supervision is mainly based on reports, making it ad hoc, laborious and inefficient. The significant value of the rights that employers may confer makes continuous and real-time monitoring of information by various government agencies necessary and proportionate. Since combining information for real-time fraud-prevention checks is such a sensitive issue, such choices could be submitted to the House of Representatives for approval or rejection.

Labour migration and knowledge migration

In a previous reflection on labour migration¹, I concluded that we need to examine the business-economic motives for labour market abuses more closely.

The Authority has already conducted a number of such investigations into financial motives. This includes, for example, a report on cost benefits.² The report set out various constructions with an average 20-30% cost advantage. Also, specific research has previously been conducted into the scheme for the Asian hospitality industry.³ Research also shows that the fine is regularly recouped within a year owing to the financial benefits gained from violations of the Foreign Nationals (Employment) Act.

The Government Committee on Demographic Trends 2050⁴ recommends getting a grip on migration, including knowledge migration.

In line with that recommendation, this reflection addresses financial motives in the knowledge migrant scheme and some options to strengthen the grip on this form of migration. The text boxes contain examples.

Definition

A 'knowledge migrant' (or a foreign knowledge worker) is a highly skilled immigrant who comes to live and work in the Netherlands. For example, a trainee doctor, (guest) lecturer or scientific researcher', see [Hiring a knowledge migrant | Ondernemersplein \(kvk.nl\)](#).

Employers can use the knowledge migrant scheme to attract migrants. The Immigration and Naturalisation Service (IND) (and to a limited extent the Employee Insurance Agency UWV) have

¹ Dutch Labour Authority annual report 2021: reflection

² [Inspectie SZW report: cost benefits and labour exploitation | Parliamentary paper | Rijksoverheid.nl](#)

³ [Report on the Asian Hospitality Industry | Report | Netherlands Labour Authority \(nlarbeidsinspectie.nl\)](#)

⁴ [Home | Government Committee on Demographic Developments 2050 \(staatscommissie2050.nl\)](#)

a role in implementation. The IND supervises with the Labour Authority, which can also take enforcement action.

Reflection on supervisory experiences gives rise to the following key points:

The name is confusing

The scheme's name does not reflect the meaning and puts people on the wrong track. The name clearly reflects what the scheme aims to do, but not what the scheme does. A name that expresses what the scheme does could be: encouraging labour migration from outside the EU/EEA⁵ to the Netherlands for positions with a salary of at least one and a half times average pay.

1. There is no educational requirement. The Dutch scheme for knowledge migrants has some requirements, but a certain level of knowledge or education is not required.

The main requirement, which is used as a 'proxy' for knowledge, is that a minimum salary is promised. As a rule, this should be at least one and a half times average pay. For the under-30s, this is a gross monthly salary of about 3,700 euros; for the over-30s, it is about 5,000 euros (amounts are indexed annually). A reduced salary criterion applies to non-EU students who completed their education or equivalent education here.

1. It is precisely that required knowledge that is usually reflected in the job's salary level. Conversely, a salary of one and a half times the average pay does not necessarily indicate a specific level of knowledge. Skills, experience and scarcity are also factors that help determine salary levels.

Scanty information

A young man from a country far outside Europe has studied at a Dutch higher professional education institution and then returns home. After some time, he decides to return to the Netherlands to work there. A payroll company hires him as a knowledge migrant and 'places' him with various companies in the agricultural sector. The representative of a hiring company states to the labour inspector that the work does not require training. The payroll company thought that was the case, based on scanty information (a photo of work clothes). Due to the reduced salary criterion for ex-students, it also pays for employers offering unskilled work to use knowledge migrants for that work.

The goal is outdated

- a. When introduced (2003/2004), the scheme was part of a wider package of measures to encourage labour migration. Processing times were shortened and 'one-stop shop, one procedure, one permit' was introduced to facilitate knowledge migration from outside the EU/EEA.
- b. It follows from the fact that the salary threshold is one and a half times average pay that a large proportion of jobs in the Netherlands fall within the definition, around 20-30%.⁶

⁵ These are migrants from outside the EU and outside the EEA (European Economic Area) and Switzerland. Free movement applies within the EU, within the EEA and Switzerland.

⁶ [Distribution of hourly and annual wages, 2006-2021 \(cbs.co.uk\)](https://www.cbs.co.uk)

- c. The reason often cited for the scheme is the need to hire enough workers with specialist high-tech knowledge for chip machine production, who can come from all over the world. That is a logical and valid argument for companies whose markets and competition are global and whose products are undeniably innovative, knowledge-intensive and successful.
- d. It is at odds with those obvious and intuitively justified cases that more than 10,500 companies (called recognised sponsors) are entitled to attract knowledge migrants. Among them are companies operating in a technological and global market. However, they also include employers whose sales markets are European, national, regional or local, as well as payroll companies/temporary employment agencies that attract knowledge migrants to provide them to employers for a fee.⁷

Dependency and risk of underpayment

The employer promises to the IND that it will pay non-EU workers at least one-and-a-half times average pay. That employer is then a recognised sponsor. He attracts workers from far outside the EU.

Being a recognised sponsor allows him to legally bring people to the Netherlands as knowledge workers and employ them in his company. They do precision work that requires skill but no special training.

Workers find that the work is not what was promised. They do not know they are being employed as knowledge migrants. They do not know that they are expected to earn one-and-a-half times average pay. They work six days a week, often for 10 hours a day or more. The employer meets the salary requirements on paper. But an investigation launched by inspectors reveals that the employer holds the bank accounts in the employees' names. The employees do not know about this or have access to the bank account. They receive a small amount in cash (10 to 20 per cent of the salary criterion), making their wages even lower than the minimum wage. They send most of that to their families in their countries of origin.

- e. On balance, the scheme is indiscriminate and allows migration to the Netherlands for a multitude of positions. That is clearly a legitimate social (political) choice, but the label 'knowledge' is then, at least in part, a misnomer.
- f. Clearly defining the term 'high-quality knowledge' in the scheme would place the focus on the target knowledge. By focusing on truly knowledge-intensive firms, the scheme's reach would be estimated to be a few hundred rather than more than 10,000 firms. In that case, the scheme would cover a few per cent of all jobs instead of dozens per cent.

Paper reality

The Labour Authority comes across a group of affiliates. These mutual links seem entirely focused on facilitating permanent residence in the Netherlands. The companies have various foreign nationals do internships and work as knowledge migrants. Knowledge migrants obtain Dutch citizenship after several years. Subsequently, the salary turns out to be more than halved, which clearly indicates that permanent residence was the goal and that the skilled migrant scheme provides a route for that.

There is no balance between rights and obligations

⁷ Intermediaries such as payroll companies can also be recognised sponsors. A payroll company sees to the payroll and formal employment for companies that actually employ the worker. The intervention of payroll companies makes it unclear where people are actually employed, which may include clients who are not themselves recognised sponsors. Payroll companies may have a useful intermediary role, but that can hardly be classified as having high-value knowledge. The scheme should not cover such employers.

- a. There is more than anecdotal evidence that the scheme encourages an earning model for work or residence rights. That is related to the fact that the right/privilege to reside in the Netherlands is a precious asset. There is no official market where the pricing of this right is established. There are however unofficial markets from which the value can be derived. It is known that prices ranging from several thousand to several hundred thousand euros are paid for the right of residence.⁸ Those highest amounts are paid for 'buying' a passport for an EU member state. That confers unlimited access to the EU with immediate effect. That is different for a knowledge migrant. A knowledge migrant will have the right of residence and be entitled to work and, after five years of legal residence in the Netherlands, will also have the right to apply for Dutch nationality.⁹ The size of the (statistical) category of knowledge migrants is estimated to be around ninety thousand people. Those are migrants in the first five years mentioned above. The people who arrived as knowledge migrants and became Dutch citizens after five years or were otherwise granted residence rights no longer have that label.

Von Münchhausen

It is a tall story that Baron Von Münchhausen told of pulling himself out of the swamp by his hair. Another tall story, but one that happens to be true, is that the authorised sponsor who has to vouch for the migrant may turn out to be one and the same person.

Inspectors have seen in several cases that the same person combines the roles of director-major shareholder, knowledge migrant and authorised sponsor. An owner of a successful company based outside the EU sets up a subsidiary or similar independent company in the Netherlands. This Dutch company applies for recognition as a sponsor with the IND. The owner of the parent company outside the EU then joins the Dutch company himself as a director-major shareholder and a knowledge migrant. Apart from the director-major shareholder, the Dutch company employs no one and turnover is not always recorded. Funding is (partly) from the parent company. In principle, this does not violate the terms of the knowledge migrant scheme.

- b. The employer providing the employment thus creates the right/privilege.¹⁰ Given the significant value of the right in question, the premise that the scheme is service-oriented and lowers the administrative burden is tempting fate.

⁸ Amounts are regularly quoted in the media for various constructions, including:

[Brussels takes Malta to court over passport trade \(nos.nl\)](#).

[Flemish Social Authority investigates fraud with residence permits by rich foreigners | Public Prosecution Service \(om-mp.be\)](#).

[In Poland, migration is again the key election issue, although this time PiS has some explaining to do - NRC](#).

[Lax rules on labour migration in Portugal lead to modern slavery \(nos.nl\)](#)

Those amounts mentioned in the media are in line with information uncovered in supervisory practice.

⁹ Dutch nationality/Dutch citizenship is also associated with citizenship of the European Union.

¹⁰ The advantage for the employer is that it can thus attract an employee who actually has unique, highly specialised high-quality knowledge that (almost) no one else has within the European Union. At the same time, there is another group of employers. For them, the knowledge required is not unique. After all, a large proportion of jobs in the Netherlands fall within the knowledge work scheme. The option to attract labour supply from outside the EU/EEA has (micro and macro) a price that can be expressed in monetary terms. That price translates into downward pressure on wages for those positions. For employers in that group, they get an employee at a lower price/lower wage than they would have otherwise. Without the scheme, wages would be higher because part of the demand would be eliminated as unprofitable, and rationalisation would take place via a higher market price/wage. There is also a group of employers that misuse the scheme. That happens as soon as the employer and/or employee (or both, acting in collusion) present the situation on paper differently from

Tempting fate

- a. The premise of providing service to the employer and minimising administrative burdens tempts fate. The granting of permits is based on prior information. The months and years after arrival are not monitored as standard or regularly. Is someone employed or not? Are wages paid, and are they above the threshold? Does the person live in the Netherlands? The regulations do not cover ongoing checks such as these.
- b. The migrant can stay under the scheme for up to five years. After that, there is a right to apply for permanent residence in the Netherlands. The knowledge worker then changes from migrant to Dutch citizen. During those five years, there is limited supervision from the IND and the Labour Authority. That means that if the IND (and, in some situations, the UWV) encounter non-compliant situations within the scheme during the course of their duties, they can take action on them. That prevents further rule violations in such a case.
- c. The supervision also means that the Labour Authority can request data from the IND and the UWV to carry out (ad hoc) a relational check¹¹. That entails, for example, checking all migrants under the scheme (data from the IND) to see whether they actually receive wages in the Netherlands (data held in the policy records at the UWV). And whether that wage is then, as promised, higher than necessary to remain under the scheme. If the conditions for the scheme are not or no longer met, the Labour Authority can take enforcement action, such as issuing a penalty report. After assessment by the fine-imposing authority, which also considers the employer's views, this may lead to the imposition of a fine or other enforcement instruments. However, these are ad hoc relational checks, not ongoing checks.
- d. The explanatory notes to the original scheme make little mention of the data sharing required for enforcement.¹² The explanatory notes to the scheme merely state that monitoring and enforcement should only be done through inter-departmental cooperation. The scheme has no provisions for ongoing checks and relational checks. Nor does it contain specific provisions to regulate the data exchange needed for current (ad hoc) monitoring and enforcement. In short, in the original scheme, data exchange is not complex. If that adequately describes the situation in 2004, when the scheme came into being, that is by no means the case for the situation in 2024.
- e. Given the high value of the right being granted, it would be proportionate to facilitate ongoing checks in the regulations so that a (computerised) relational check would be carried out continuously.

how it is at the time of application or present the situation differently from what it becomes after the knowledge migrant starts employment.

¹¹ Relational checks are a technique where a known relationship between two or more variables is checked to establish whether that relationship actually exists. [Relational check as an audit instrument](#). For example For example, a person migrating to the Netherlands must be registered with the municipality. A person coming to work at a company must appear on the payroll and in the Policy Records, etc.

¹² [Bulletin of Acts and Decrees 2004, 482 | Overheid.nl > Official notices \(officielebekendmakingen.nl\)](#)
And: cabinet position on the admission of knowledge migrants (2003): [kst76964.2s.pdf \(officielebekendmakingen.nl\)](#)

- f. Data sharing is subject to a wide range of reviews through horizontal regulations on data management and processing, such as the General Data Protection Regulation (GDPR). And this is just the ad hoc data exchange. When the scheme was set up in 2004, explicitly regulating data sharing may not have been necessary. But data sharing has been met with much more restraint since then. Data sharing is also very sensitive, especially if the aim is to combat fraud.¹³ That makes all actors-each for himself-restrained in advance. And the individual restraint reinforces the collective as long as it is unclear whether the legislator considers these checks necessary. To solve that, it would be desirable for the House of Representatives to be presented with specific relational checks to approve or reject them.

Innovative excuses not to pay

The employer is a recognised sponsor. Inspectors find that the company pays the knowledge migrants - who have previously studied in the Netherlands - significantly less than the salary criterion. The investigation shows that the company sometimes fails to pay employees for months or pays them much too late. Knowledge migrants are strung along. The employer makes fresh promises and proposes solutions. For example, unpaid wages can become a loan from the employee to the employer. Or that the unpaid salary is presented as an investment in shares in the company.

In conclusion

To get a grip on this form of migration, the scheme needs to focus on truly living up to its name. That limits the use of the scheme to companies with genuinely high-value knowledge needs and reduces the scope for improper and fraudulent use. If politically sanctioned, the residual risk of abuse can be further mitigated through permanent relational checks.

Buying residence status

The Labour Authority comes across constructions, presumably rigged to obtain permanent residence in the Netherlands. A recognised sponsor in the Netherlands applies for permits for several highly skilled migrants from a single country outside Europe. Everything seems fine on paper, but in reality, a cash flow is set up from which the mandatory remittances to the Tax and Customs Administration are paid, as well as the salary of the knowledge migrant. However, the knowledge migrant does not work in the Netherlands. The knowledge migrant pays hefty sums - well above €100,000 - to participate in the construction. The authorised sponsor or any other party who created the structure pockets the substantial gains

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¹³ See the final report of the Parliamentary Committee of Inquiry into Fraud Policy and Services: [Parliamentary Committee of Inquiry into Fraud Policy and Services | House of Representatives of the States General](#)