

MIRREM

Measuring Irregular Migration

www.irregularmigration.eu

Netherlands Country Brief on Irregular Migration Policy Context

AUTHORS:

Lalaine Siruno and Arjen Leerkes



Co-funded by:



Canada Excellence
Research Chair in
Migration & Integration

Table of contents

THE MIRREM PROJECT	3
1.1 POLICY PRIORITIES	4
1.2 OVERVIEW OF THE DUTCH POLICY FRAMEWORK.....	5
1.2.1 Policy implementation measures	5
1.2.2 Policy evolution: Main turning points	7
1.2.3 Policy impact	7
1.2.4 Policy Challenges in Addressing Migrant Irregularity	8
1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN THE NETHERLANDS: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY	12
1.3.1 Pathways into and out of irregularity.....	14
1.3.2 Regularisation	15
References	17
ANNEX 1: Policy and Legal Frameworks	18
ABOUT THE AUTHORS	26

LIST OF TABLES

Table 1: Relevant Dutch institutions	9
Table 2: Categories of migrant irregularity in the Netherlands	12

THE MIRREM PROJECT

MIRREM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MIRREM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRREM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

TO CITE:

Siruno, L. & A. Leerkes. 2024. Netherlands Country Brief on Irregular Migration Policy Context. MIRREM Report. Krems: University for Continuing Education Krems (Danube University Krems). <https://doi.org/10.5281/zenodo.12623190>

KEYWORDS

Irregular migration; policy measures; pathways into and out of irregularity

FUNDING ACKNOWLEDGEMENT

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Research Executive Agency. Neither the European Union nor the granting authority can be held responsible for them.

In addition, MIRREM benefits from funding provided by UK Research and Innovation (UKRI) under the UK government's Horizon Europe funding guarantee. The Canadian research component of this project is undertaken, in part, thanks to funding from the Canada Excellence Research Chairs Program of the Government of Canada.

Netherlands

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

Adopted in 2018, the Dutch government's comprehensive approach to migration is set out in a six-pillar agenda which collectively aims to achieve a "humane and effective migration policy" (Government of the Netherlands, 2018, p. 2). While the government acknowledges that most migrants entering the country do so through regular channels, several elements of the agenda specifically address the issue of migrant irregularity. These are:

- **Preventing irregular migration**
Preventing irregular migration involves tackling its root causes, establishing more effective border management processes, and returning migrants who do not meet admission or residence requirements. There is limited attention being paid to unauthorised workers¹ and the political debate centres on rejected asylum seekers.
- **Combatting illegal residence and stepping up returns**
This applies to refused asylum seekers and to other categories of migrants who are not or are no longer entitled to a residence permit. They will be encouraged to leave independently and voluntarily but detention and forced return remains a real option particularly if a person is found guilty of a criminal offence or public nuisance.
- **Promoting legal migration routes**
This is aimed at facilitating highly skilled migration and exploring how existing forms of regular migration may be used to promote return and readmission and, hence, to curb irregular migration. Examples include disseminating opportunities for labour

¹ This pertains to both unlawfully present migrants working illegally, and lawfully present migrants working in breach of their residence or visa conditions.

migration, temporary employment (circular migration), and foreign student grants and internships.

In the 2022 State of Migration report published by the government, it underscored that there needs to be “a better grip” (through insight and cooperation) and “more control over migration” (Ministry of Justice and Security, 2022, p. 19). Recent world events, including COVID-19, the government takeover by the Taliban in Afghanistan and the Russian invasion of Ukraine, were cited as aggravating external circumstances impacting the migration domain. Internally, ongoing problems with asylum reception accentuate how migration, crucially, should not “overwhelm” but instead meet the capacity and needs of Dutch society.

1.2 OVERVIEW OF THE DUTCH POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Tackling the root causes through migration cooperation**

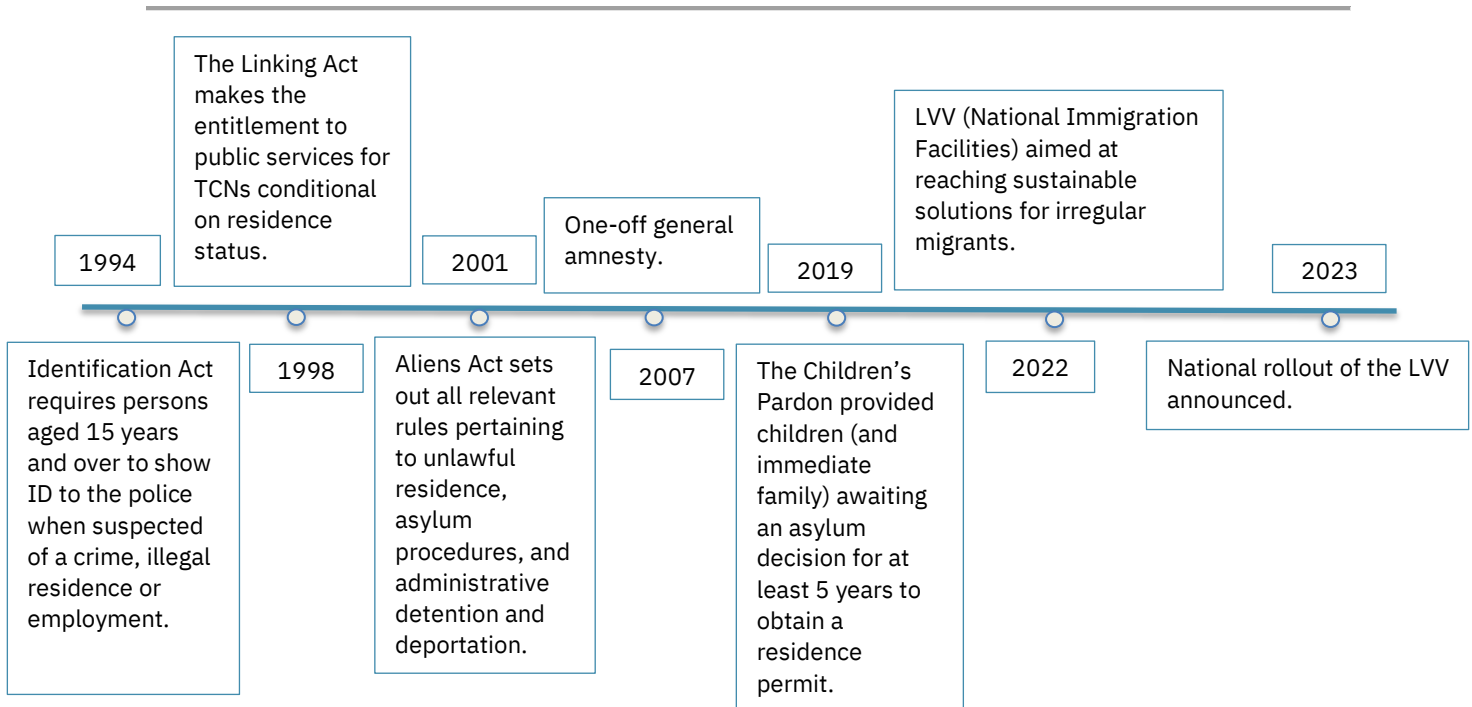
The government wants to combat irregular migration by tackling the root causes in countries of origin, particularly in North and West Africa. Investments are made in combating poverty, bringing and maintaining stability and good governance, and strengthening foreign trade and development cooperation. The Netherlands also supports countries in improving legislation, investigation and prosecution capacity, and cross-border cooperation. It supported Mali, Senegal and Gambia, for example, in developing legislation to combat human trafficking and migrant smuggling. In Morocco, the Dutch government offered training courses for authorities to trace money flows and undermine the business model of human traffickers and smugglers.

- **Awareness campaigns**

The government has likewise launched information campaigns to inform potential migrants about the risks of irregular migration, such as death, human trafficking, and exploitation. They take various forms, including social media and radio campaigns, events, and direct consultations between potential migrants and confidential advisors from organisations contracted by the government to run the awareness-raising campaign (for example, Seefar). Awareness-raising campaigns were held in Afghanistan, Kurdistan and Central Iraq, and North and West Africa. According to the Ministry of Foreign Affairs, by 2022, these campaigns have reached over 16 million people, including through IOM's ‘Migrants as Messengers’ programme, where returning migrants share their experiences with young people through video, theatre and other art forms to help them make more informed choices about migration.

- **National immigration facilities (*Landelijke Vreemdelingen Voorzieningen, LVV*)**
Launched in 2019 in five municipalities – Amsterdam, Eindhoven, Groningen, Rotterdam and Utrecht – the LVV is a pilot programme for irregular migrants aimed at reaching a sustainable perspective or a ‘durable solution’ in the form of either legal stay in the Netherlands, onwards migration, or return to the country of origin. It is a cooperation between the Immigration and Naturalisation Service, Repatriation and Departure Service, the police, and civil society organisations working under the direction of municipalities. It provides participants access to shelter, an allowance, professional guidance, and different activities. A condition for participation is cooperation in creating the sustainable perspective that is possible.
- **Entry ban**
Foreign nationals who are not allowed to remain in the Netherlands including overstayers, those who received a return decision, those who have residence permits withdrawn or asylum applications cancelled, are usually given 28 days to leave. Failure to do so results in an entry ban of usually two years, during which time the person is not allowed to enter any other Schengen country. Violation of the entry ban is punishable with a prison sentence of six months or a fine of a few thousand Euro as stipulated in Section 197 of the Dutch Penal Code and Section 108 of the Aliens Act.
- **Employer sanctions**
The Foreign Nationals Employment Act, amended in 2013, expressly prohibits employers and private individuals from employing foreigners who do not have legal access to the Dutch labour market without a valid work permit. If the permits cannot be produced during inspection, this constitutes illegal employment, which is considered a serious violation of the Act and punishable with severe fines: €8,000 for each illegally employed person. Private individuals have to pay €4,000 for each illegally employed person.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Reported decline in irregular migration**

In December 2020, the government reported that the number of foreigners residing in the Netherlands without the right of residence had fallen substantially in recent years – from 194,000 in 1987, to between 23,000 and 58,000 in 2017-2018. The downwards trend is attributed to the requirement to carry identification documents, as well as to the Linkage Act, which excluded aliens without a right of residence from access to public services and reorganised the Aliens Police (Government of the Netherlands, 2020). However, it remains uncertain to what extent this decrease can be attributed to the implemented measures returns (Tweede Kamer der Staten-Generaal, 2019).

- **Reputed effectiveness of migration cooperation policies**

The Ministry of Foreign Affairs reports that activities under migration cooperation helped prevent irregular migration and protect vulnerable migrants. This is done, for example, by providing information about the risks of irregular migration and on alternatives. It also funded efforts to improve prospects for refugees and vulnerable host communities in countries around Syria and in the Horn of Africa. However, despite efforts to tackle “the root causes”, the inflow of irregular migrants from target countries has not entirely ceased, and research casts doubt on whether aid can greatly and sustainably deter emigration (see for example, Clemens & Postel, 2018).

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Tensions in multi-level and multi-actor (multi-layered) migration governance**

The governance of migration in the Netherlands follows a multi-level or multi-layered approach in which different actors are involved in the interpretation and implementation of policies. However, there are tensions, sometimes even contradictions, between the actions taken by the national government on the one hand, and the local authorities on other. The objectives and perspectives of these actors are not always in alignment (EMN Nederland, 2021). The same tension exists between the authorities and civil society organisations: for example, some NGOs participate in the LVV but are critical about the emphasis placed on returns.
- **Reputation management instead of sustainable solutions**

The government tries to maintain its restrictive and selective migration policy, but there have been instances when the authorities back down when challenged by non-state actors or in the face of a public outcry. It uses temporary redress and reputation management as policy instruments to shore up public trust and re-instil confidence. While these are common manoeuvres in the political arena, genuine accountability in relation to the damaging and lasting impacts of its migration policies is lacking, as are more sustainable and humane measures to tackle irregular migration.
- **Tensions between enforcement and human rights**

There is also a tension between social exclusion and the enforcement of migration legislation on the one hand, and international human rights law on the other. This leads to the adoption of certain institutional bypasses or firewalls that grant children or young people in irregular situations access to education, for example, as well as policies pertaining to the safe reporting of crime, access to family shelters, and opportunities to find durable solutions like the LVV (please see Annex).
- **Selective enforcement of returns**

The enforcement of return is at best, selective, as irregular migrants who do not encounter Dutch authorities are not directly subjected to return policies and may be irregularly staying longer-term (EMN Nederland, 2021). There is also a focus on rejected asylum seekers and those involved in criminal activities. Thus, despite the government's consistent declarations that individuals who are not lawfully permitted to stay in the Netherlands must be returned to their country of origin (Government of the Netherlands, 2022, p. 44), the practical enforcement of policies proves to be more challenging than anticipated due to the lack of systematic and comprehensive implementation.
- **Labour market dynamics**

The ongoing demand for cheap labour also poses a significant challenge in the implementation of Dutch migration policies. Despite employer sanctions, some labour sectors like agriculture, hospitality, domestic work and construction remain reliant on irregular migrant workers. Again, the focus on rejected asylum seekers and

deviant individuals² largely takes attention away from migrants engaged in unauthorised work. This is a segment of the irregular migrant population that is not as exposed to the enforcement of migrant legislation.

- **Integration strategies despite systematic exclusion**

Policies and implementation measures do not deter irregular migrants from affirming their presence and participating in social life. Despite the oft-cited limitations imposed by a precarious legal status, not all irregular migrants are precluded from exercising agency and integrating into segments of the destination country and community through municipality and NGO support networks, the informal economy, and political activities (Chauvin & Garcés-Mascareñas, 2014). They are able to raise the level of recognition in their interpersonal interactions despite not having legal rights to political participation (Siruno et al., 2022).

Table 1: Relevant Dutch institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Directorate-General for Migration (DGM), Ministry of Justice and Security (JenV)	The DGM is responsible for the development and implementation of policies based on the Aliens Act and the Dutch Nationality Act. Operating under JenV, it plays a financing role in the reception of asylum seekers, the handling of admission procedures and the return of foreign nationals from the Netherlands. JenV is also responsible for the implementing organisations including the Immigration and Naturalisation Service (IND), Repatriation and Departure Service (DT&V), the Central Agency for the Reception of Asylum Seekers (COA) and for the centres of the Custodial Institutions Agency (DJI) where immigration detention is implemented. In addition, JenV has authority over the Royal Netherlands Marechaussee (KMar) and the police with regard to immigration and border control.	Link (EN)
2.	Immigration and Naturalisation Service, Ministry of	The IND is the admissions organisation of the Netherlands and is responsible for implementing the admissions policy. It assesses all applications from foreign nationals	Link (EN)

² This term is used operationally based on Leerkes et al. (2012). “Deviant” individuals are unauthorised migrants involved in crime and nuisance whereas ‘nondeviant’ are their moderately incorporated counterparts who do not come into contact with authorities and are to a large degree tolerated by local residents and municipal authorities.

	Justice and Security (IND)	who wish to stay in the Netherlands, but also whether the permitted stay of foreign nationals in the Netherlands should be terminated.	
3.	Repatriation and Departure Service, Ministry of Justice and Security (DT&V)	As implementer of the return policy, the DT&V is responsible for allowing third-country nationals without a right of residence to return legally and respectfully to their country of origin. In collaboration with organisations like IOM, DT&V also helps foreign nationals gain prospects for reintegration in the country of origin. DT&V can also organise forced departure for those who do not leave the Netherlands of their own accord.	Link (EN)
4.	Custodial Institutions Agency (DJI)	On behalf of the Minister for Justice and Security, the DJI is responsible for the implementation of sentences and custodial measures, such as the detention of foreign nationals who are ordered to leave the Netherlands.	Link (EN)
5.	Central Agency for the Reception of Asylum Seekers (COA)	COA is the organisation that provides reception and guidance for asylum seekers. Commissioned by the State Secretary for Justice and Security, it offers asylum seekers temporary accommodation and supports them in preparing for their future, in the Netherlands or elsewhere.	Link (EN)
6.	VluchtingenWerk Netherlands (Refugee Council Netherlands, VWN)	VWN is a non-governmental organisation that represents the interests of refugees and asylum seekers in the Netherlands. Its core tasks are to provide personal support in both legal and social areas, to influence policy, such as identifying bottlenecks in the asylum procedure, and to advocate for asylum seekers and refugees.	Link (EN)
7.	Ministry of Foreign Affairs (BZ)	BZ is responsible for the implementation of the European short-stay visa policy. BZ is also involved in the MVV process (provisional residence permit), integration, and return. It also coordinates European migration policy, and is responsible for the financing of projects aimed at tackling the root causes of migration.	Link (EN)

8.	Council of State (Raad van State, RvS)	The Administrative Jurisdiction Division of the RvS is the highest national general administrative court in immigration law. It looks into the process-related and logistical coordination in the migration chain at the so-called interfaces.	Link (EN)
9.	Council for the Judiciary (de Rechtspraak, RvdR)	The RvdR forms the link between the Minister for Justice and Security and the courts. The Council's task is to ensure that the courts (the eleven district courts, the four courts of appeal, the Central Appeals Tribunal and the Trade and Industry Appeals Tribunal) can properly fulfil their judicial duties.	Link (EN)
10	Royal Netherlands Marechaussee (KMar)	The KMar is a police organisation with a military status that monitors the security of the state. Their tasks include border control, enforcement of returns, mobile security surveillance, and tackling migration-related crimes including human smuggling and identity fraud. The KMar is active in the Netherlands (at the internal and external borders) and at the external borders of Europe.	Link (EN)
11	National Police (Nationale Politie)	The police are tasked with implementation of the Aliens Act and the Schengen Borders Code.	Link (EN)
12	Seaport Police (Zeehavenpolitie, ZHP)	The performance of border checks (including the assessment of visa applications) and border surveillance in and around the port of Rotterdam (a maritime external border of the Schengen area) is the responsibility of the ZHP, part of the Rotterdam police unit.	Link (NL)

Additional relevant institutions involved in the Dutch “migration chain” are included in Annex.

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN THE NETHERLANDS: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in the Netherlands

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Irregular residents (umbrella term)	Foreign nationals who are not in possession of a valid residence permit or do not meet the conditions for continued stay and are therefore obliged to leave the country.
Overstayer	A person remaining in the Netherlands beyond the period for which entry was granted. It is usually a person who has legally entered the country, but who has stayed beyond the expiry of his/her visa and/or residence permit.
Failed asylum seeker	A person who applied but has not received asylum and has exhausted all legal remedies.
Refused entry at the border (inadmissible person)	A person who does not fulfil entry requirements, usually because of insufficient financial means to cover the period of stay and type of accommodation, or insufficient documentation such as fraudulent, invalid or forged travel documents such as passports, visas or residence permits. Another ground for refusal is being deemed a security risk i.e., posing a threat to public order, homeland security, public health or international relations among the EU member states.
Illegal entry	Crossing a land, air, or sea border clandestinely, or by using forged travel or identity documents.
Cancelled/Withdrawn residence permit	A person who no longer fulfils the conditions of residence in the country.
Persons in illegal or unauthorised employment	A person not in possession of a valid work permit or who is working more hours than allowed.
Children born in irregularity	Children whose parents are irregular residents.
Other unlawfully residing persons where continued stay is punishable	“1Fers” (war criminals), and “VRIS-ers” (other persons regardless of citizenship who have been sentenced for crimes). They can be excluded from protection, or their residence status can be revoked.

Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g., who does this category apply to, under what conditions, who is exempted, implications)
Irregular migrants subject to a return decision but the return cannot be enforced due to legal obstacles (e.g., non-refoulement, medical or humanitarian reasons, etc.)	An irregular migrant may be eligible for postponement of return for medical reasons based on Article 64 of the Aliens Act (Vw). After one year of postponement of return, the migrant can apply for a temporary residence permit based on medical treatment.
Irregular migrants subject to a return decision but the return cannot be enforced due to practical obstacles (cooperation of the person concerned, problems with travel documents etc.)	A “no-fault” permit can be issued to persons who have independently attempted to return, and who can prove that they have contacted the authorities of the relevant third countries regarding their readmission and to obtain the required (travel) documents. If the authorities do not cooperate or do not authorise return, the applicant is considered “not at fault”, as long as he or she has done everything in their power to make their identity known.
Victims of trafficking in human beings (THB)	Pursuant to the Aliens Circular, victims of THB are granted a temporary residence permit on temporary humanitarian grounds (“B8/3”) for the duration of the recovery and reflection period of three months. The refusal to grant a recovery and reflection period cannot be appealed. Thereafter, they can be granted a temporary residence permit of one year, which is renewable. This decision can be appealed.
EU citizens from another EU MS without residence rights	Conditions (e.g., who does this category apply to, under what conditions, who is exempted, implications)
Refused entry	EU citizens from other EU member states may be refused entry to the Netherlands if they have (or might have) tuberculosis, or if they have been deemed to be an undesirable foreign national by the Netherlands by posing a threat to public order or national security.
Loss of right of residence	If the EU citizen who has been in the Netherlands for more than three months is economically inactive and does not have

	<p>sufficient income or does not have a family member who can provide adequate financial support, they may lose their rights of residence in the Netherlands. Income is sufficient if it is equal to or higher than the Dutch minimum wage plus holiday allowance (equivalent to €1,995.00 gross per month as of 01 July 2023). One can also lose the right of residence if the EU citizen or family member applies for a benefit from public funds without having a permanent residence permit that is usually granted after a minimum of 5 years of legal and continuous residency in the Netherlands.</p>
--	--

1.3.1 Pathways into and out of irregularity

Migrants in the Netherlands generally fall into irregularity when they do not or no longer meet the conditions of entry or stay. If found “illegally staying” by authorities, returning them to the country of origin is the priority. Return can be either voluntary or involuntary:

- **Independent departure (voluntary return)**

The return policy aims to encourage voluntary and sustained repatriation of foreign nationals who are not allowed to remain in the Netherlands by offering financial assistance or assistance in kind for return and reintegration (for example assistance in setting up a business or education). In the Netherlands, the term *zelfstandige terugkeer* (independent return) is often used instead of voluntary return. The Repatriation and Departure Service (DT&V) works with IOM and other NGOs to facilitate these. Special attention is given to vulnerable migrants such as those with health problems, victims of human trafficking, and unaccompanied minors. DT&V also works to determine the identity and nationality of migrants and helps them obtain replacement or emergency travel documents.

- **Deposit, detention, and forced departure (deportation)**

When a foreigner who is not allowed to stay in the Netherlands, such as a failed asylum seeker, does not want to leave the country of their own accord (does not cooperate with departure), the government can force them to pay a deposit that will be repaid on their departure. If there is a risk of a failed asylum seeker evading return, the government will place them in detention until the DT&V can organise a forced departure. In some cases when the foreigner is under 18, they will be accompanied by an officer from the DT&V on their flight back to their country of origin. Irregular migrants apprehended by police are normally also placed in immigration detention with a view to deportation.

1.3.2 Regularisation

The Netherlands has been, and remains, an anti-regularisation advocate on the European political scene. Pathways to regularisation are still generally limited to marriage/cohabitation with a legally staying person or applying for asylum. There are, however, other types of piecemeal regularisations that happen on a case-by-case basis (Leerkes et al., 2012). The grounds or mechanisms for such regularisations include the following:

- [“No-fault” permit \(*buitenschuld*\)](#)
Sometimes, return is not legally or practically possible. In this case, the migrant may be eligible to obtain a “no-fault” residence permit. The permit is intended for persons who have independently attempted to return, and who can prove that they have contacted the authorities of the relevant third countries regarding their readmission and to obtain the required (travel) documents. If the authorities do not cooperate or do not authorise return, the applicant is considered “not at fault”, as long as he or she has done everything in their power to make their identity known. The fulfilment of these conditions needs to be certified by the DT&V, based on evidence submitted by the applicants, such as correspondence with consular authorities.
- Narrowly defined cases in which persons staying irregularly may obtain a [residence permit on medical or humanitarian grounds](#)
A small number of residence permits (which can differ in duration of validity, renewability, and the entitlements they confer in relation to access to the labour market and social security benefits) can also be granted to persons in irregular situations based on medical or humanitarian considerations. These are considerations outlined in Articles 3.46, 3.48 and 3.50 of the Aliens Act 2000. Those eligible include:
 - Persons who are victims and witnesses of trafficking in human beings who cooperate with authorities or who have important reasons not to cooperate;
 - Victims or persons at risk of honour crimes and domestic violence;
 - Persons involved in a witness protection programme;
 - Persons undergoing medical treatment in the Netherlands;
 - Terminally ill persons.
- 2013 – 2019: Definitive Regulation for Long-term Resident Children ([Definitieve Regeling Langdurig Verblijvende Kinderen](#), DRLVK)
A new mechanism which came to be known as the ‘children’s pardon’ was introduced in 2013 with the aim of regularising the status of children who had been in the asylum procedure for a minimum of five years, provided that the process had started before their thirteenth birthday. Additionally, their immediate family members could also be granted a residence permit through this mechanism if their family ties could be proven. However, in 2019, the pardon measure was abolished, together with the discretionary power of the Minister of Migration to grant residence permits, as these were deemed detrimental to the willingness to cooperate with departure and return.

- 2017: [Chavez-Vilchez ruling](#)
Building on the 2011 *Ruiz Zambrano* ruling, the Court of Justice of the European Union (the Court) made a ruling on 10 May 2017 in the case of Chavez-Vilchez, stating that a third-country national who does not possess a right of residence, but is a parent responsible for the care of a minor child who holds Dutch nationality, can apply for a residence permit under specific conditions. The Chavez-Vilchez judgment established that if denying a residence permit to a third-country national parent could result in the child being compelled to leave the territory of the European Union with their non-EU parent, then the parent must be granted a residence permit.
- 2019: New discretionary power of the director of the IND ([ambtshalve toets schrijvende situatie](#), official assessment of compelling circumstances)
The discretionary power of the Minister for Migration abolished in 2019 was replaced by a new discretionary measure under the responsibility of the head director of the IND. Within the first-instance application procedures for residence permits or asylum, the IND now has the ability to consider granting residence authorisation to applicants who would not meet the usual criteria for a permit, based on exceptional reasons. This decision is made either *ex officio* or through a court judgment in an appeal process. Applicants who believe that there are exceptional and individual circumstances that could justify a discretionary decision must provide a reasoned explanation for why it should be applied, along with supporting evidence.
- 2022: [Reassessments of cases under the Children's Pardon](#)
In March 2022, the IND was prompted by a parliamentary motion to review cases (around 30 files) under the Final Regulation for Long-term Resident Children. This was in recognition of the fact that in certain situations, a children's pardon permit can be granted after all, even if no asylum application was submitted for a child.

References

- Chauvin, S., & Garcés-Mascreñas, B. (2014). Becoming less illegal: Deservingness frames and undocumented migrant incorporation. *Sociology compass*, 8(4), 422-432. <https://doi.org/10.1111/soc4.12145>
- Clemens, M. A., & Postel, H. M. (2018). Detering emigration with foreign aid: An overview of evidence from low-income countries. *Population and Development Review*, 44(4), 667. <https://doi.org/10.1111/padr.12184>
- EMN Nederland. (2021). *Responses to long-term irregularly staying migrants: practices and challenges in EU Member States and Norway - National contribution for the Netherlands*. [https://home-affairs.ec.europa.eu/system/files/2022-08/NL%20Template ltism study 2020 final%20for%20publication 0.pdf](https://home-affairs.ec.europa.eu/system/files/2022-08/NL%20Template%20ltism%20study%202020%20final%20for%20publication%200.pdf)
- Government of the Netherlands. (2018). *Comprehensive agenda on migration*. The Hague Retrieved from <https://www.government.nl/binaries/government/documenten/parliamentary-documents/2018/07/10/comprehensive-agenda-on-migration/Comprehensive+agenda+on+migration+ENG.pdf>
- Government of the Netherlands. (2020). *Estimates of numbers of illegal immigrants show downwards trend* <https://www.government.nl/latest/news/2020/12/16/estimates-of-numbers-of-illegal-immigrants-show-downwards-trend>
- Government of the Netherlands. (2022). *Coalition agreement 'Looking out for each other, looking ahead to the future'*. Retrieved from <https://www.government.nl/documents/publications/2022/01/10/2021-2025-coalition-agreement>
- Leerkes, A., Varsanyi, M., & Engbersen, G. (2012). Local limits to migration control: Practices of selective migration policing in a restrictive national policy context. *Police Quarterly*, 15(4), 446-475. <https://doi.org/10.1177/1098611112453719>
- Ministry of Justice and Security. (2022). *De Staat van Migratie 2022*. <https://open.overheid.nl/documenten/ronl-2cf0251dee3fec7c64207480c2720226feb4510f/pdf>
- Siruno, L., Swerts, T., & Leerkes, A. (2022). Personal Recognition Strategies of Undocumented Migrant Domestic Workers in The Netherlands. *Journal of Immigrant & Refugee Studies*, 1-14. <https://doi.org/10.1080/15562948.2022.2077503>
- Tweede Kamer der Staten-Generaal. (2019). *Kamerstuk 19637, nr. 2470*. Den Haag Retrieved from <https://zoek-officiëlebezoekingen-nl.mu.idm.oclc.org/kst-19637-2470.html>

ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1	Identification Act [Wet op de Identificatieplicht]	1994	<p>This Act, which was amended in 2001 is about compulsory identification. It requires that all persons aged 14 or older in the Netherlands are required, upon request, to show a valid proof of identification to police officers, ticket inspectors on public transport, and special enforcement officers (BOAs) like labour inspectors provided that information about the person's identity is required to execute their regular tasks. A police officer may ask for identification for example, if a person is suspected of having committed an offence, or if there is a reasonable suspicion of illegal stay and/or illegal employment. An important provision under this Act is that Dutch or European driving licences are not considered as valid proof of identity for people starting a new job. This is because they do not specify nationality or include any information regarding to residency status.</p>	<p>Link (NL)</p> <p>Link (EN)</p>

2	The Linkage Act or Benefit Entitlement (Resident Status) Act [Koppelingswet]	1998	<p>The Linkage Act establishes a link between right of residence and the services provided by the government. It makes the entitlement to a whole range of public services including social security benefits, family allowances and housing subsidies for third country nationals conditional on residence status. It ensures that only migrants with valid residence permits can access the formal labour and housing markets and receive social security benefits. The Act was introduced based on a presumption that exclusion will reduce irregular migration. Its implementation requires a wide range of public registration data accessible for cross-checking to verify an individual's residence status when accessing public services. Usually, this is done by checking a person's right of residence in the Aliens Administration System (VAS) of the Aliens Police which is now linked to the municipal personal records database (GBA). Despite exclusion from many public services, under the Act, irregular migrants still have a right to necessary medical assistance, including preventive medical assistance such as vaccination and pregnancy care; legal aid; and for those below 18 years old, to education. The corresponding legislations, the Dutch Health Insurance Act and Compulsory Education Act are discussed in the next Table.</p>	Link (NL)
---	--	------	---	---------------------------

3	Aliens Act 2000 [Vreemdelingenwet]	2001	<p>This Act, which has been revised multiple times, sets out all relevant rules pertaining to unlawful residence, asylum procedures, and administrative detention and deportation. Importantly, under this legislation, unauthorised residence in itself is not considered a criminal offence, but rather a violation of administrative law that could result in administrative detention and deportation. Of the 119 provisions, Section 3 of the Act lays down the conditions for refusal of entry into the Netherlands. Section 10 states that ‘an alien who is not lawfully resident may not claim entitlement to benefits in kind, facilities and social security benefit...’ Sections 14 to 17 enumerate the grounds for the rejection of an application for or renewal of a residence permit, and cancellation of an existing one. The consequences for the alien are in Section 25. In Chapter 3 of the Act (Sections 26 to 43), asylum residence permits are covered. Section 43 in particular, spells out the consequences of a negative asylum decision. Measures for restriction and deprivation of liberty as a consequence of an alien being not lawfully resident, and those pertaining to departure, expulsion and orders declaring a person to be an undesirable alien are covered in Chapters 5 and 6 of the Act, respectively.</p>	Link (NL)
			Link (EN)	

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	The Compulsory Education Act [Leerplichtwet]	1969	Stemming from national law and a corollary to the Linkage Act, all children (including irregular migrants) under the age of 18 have the right to education and training. More specifically, children aged 5 to 16 are required to attend school. Those aged between 16 and 18 who have not yet obtained a basic qualification diploma are required to obtain one. This applies to children of all nationalities regardless of residency status. In order to facilitate this, irregular migrant children are given a temporary education number (onderwijsnummer) via their school, which is created for them by the Education Executive Agency (DUO) in order to enable them to go to Dutch primary and secondary school.	Link (NL)
2	Foreign Nationals Employment Act [Wet arbeid vreemdelingen, Wav]	1994	Most recently amended in 2023, this law regulates who can be issued a work permit and as such, is allowed to work in the Netherlands. With the exception of knowledge workers (e.g., university researchers), such work permits are normally only issued if the employer can demonstrate that there are no Dutch nationals and EU-citizens who can do the work. The Law also expressly prohibits employers and private individuals to employ foreigners who do not have legal access to the Dutch labour market without a valid work permit. If the permits cannot be produced during inspection, this constitutes illegal employment, which is a serious violation of the Act and punishable with severe fines: € 8,000 for each illegal employee. Private	Link (NL)

			individuals have to pay €4,000 for each illegal employee.	
3	Dutch Health Insurance Act [Zorgverzekeringswet, Zvw]	2006	This Act stipulates that anyone who live or work in the Netherlands is obliged to take out basic health insurance. However, because of the Linkage Act, irregular migrants cannot do so (health insurance being a form of social security), rendering them ‘uninsurable.’ Through the Zvw, the government has set up a fund allowing healthcare providers to recoup up to 80% of costs incurred in treating patients who are ‘uninsurable’ if these patients cannot pay. The fund is administered through the Central Administration Office (CAK).	Link (NL)
4	Pre-arrival integration law (Wet inburgering in het buitenland)	2006	Requires those who wish to regularise their status through marriage with a Dutch national to go back to their country of origin to take a language and culture test at consulates in their countries of origin. Not only does this measure reduce substantially the possibility of legalisation through marriage (a common route out of illegality in many other Western European countries), but it also limits marital migration (for TCNs) to the Netherlands.	Link (NL)
5	‘Free in, free out’ policy	2012	Based on European Parliament Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime, this policy allows irregular migrants who have been a victim or witness of crime to enter into a police station to report the crime and be guaranteed to freely leave without being arrested or detained on account of their irregular status. The policy has the form of a ‘gentlemen’s agreement’ and is mentioned in official policy	Link (EN)

			documents but has no formal basis in national legislation.	
6	'No fault' policy (<i>buitenschuld regeling</i>)	2019	The implementing regulations of the Aliens Act 2000 was amended such that under Section 4, a special residence permit may be issued to aliens who cannot leave the Netherlands through no fault of their own for example, if the country of origin refuses to issue a temporary travel document (<i>laissez-passer</i>). An important precondition is cooperation with return procedures, and doing everything possible, but to no avail, to return to the country of origin.	Link (NL)
7	National Immigration Facilities (LVV policy)	2019	The LVV is a pilot program for irregular migrants launched in five cities (Amsterdam, Eindhoven, Groningen, Rotterdam and Utrecht) aimed at reaching a sustainable perspective for the participants in the form of either legal stay in the Netherlands, onwards migration, or return to the country of origin. The program is run as a cooperation between the IND, DT&V, the police, and civil society organisations working under the direction of municipalities (Mack et al., 2022). During the program, of a maximum of 18 months, participants will have access to 24-hour shelter, an allowance, professional guidance and different activities. A condition for participation in the LVV and shelter is that one cooperates with creating the sustainable perspective that is possible. Every participant will get a case manager when they are placed in a trajectory. During this time, the participant cannot be forced to return to their country of origin. When a LVV trajectory is ended, with or without	Link (NL)

			obtaining sustainable perspective, access to the shelter will also be ended. The LVV pilot ended in 2022, but it will be rolled out nationally in 2024.	
--	--	--	---	--

Other institutions involved in the Dutch 'migration chain'

Sr. No.	Institution/Department	Responsibilities	Weblink to source
1	Nidos	Nidos is an independent institution that carries out the guardianship task for Unaccompanied Minor Foreign Nationals (AMVs). Unaccompanied minors are assigned a guardian until they turn 18 or leave the Netherlands. In addition to the guardianship task, Nidos also provides shelter for some of the unaccompanied minors.	Link(EN)
2	International Organization for Migration – Netherlands (IOM in the Netherlands)	IOM in the Netherlands focuses on migrants who want to leave the country voluntarily, resettlement from reception centres in the region, relocation, family reunification, integration and migration and development. As an intergovernmental UN-related organisation, IOM has an independent position and is not a chain partner but a partner that cooperates with the migration chain and has an agreement with the Dutch government to support the voluntary departure of migrants from the Netherlands.	Link(EN)

3	United Nations High Commissioner for Refugees (UNHCR)	As a party to the Geneva Refugee Convention (1951) and the Protocol (1967), the Netherlands has committed itself to cooperation with the UNHCR. With regard to the role of UNHCR in the Netherlands as a representative of refugees and asylum seekers, it is enshrined in the regulations that UNHCR has access to persons in immigration detention as well as to persons in COA reception locations. As an intergovernmental organisation, UNHCR has an independent position and is not a chain partner, but a partner that cooperates with the migration chain.	Link (NL)
4	The Association of the Netherlands Municipalities (VNG)	The VNG represents all municipalities in the Netherlands and facilitates the exchange of knowledge and experience regarding the implementation of national and local policies, including those pertaining to the housing and overall integration of status holders. The VNG also lobbies the national government to improve the reception conditions of asylum seekers and to provide more support to COA.	Link(EN)
5	Ministry of Social Affairs and Employment (SZW)	The SZW is responsible for access to the Dutch labour market. It monitors the implementation of the Foreign Nationals Employment Act (Wav). It is also involved in protecting employment conditions and combating bogus contracts and labour exploitation. Finally, the Ministry of Social Affairs and Employment is responsible for the integration policy.	Link(EN)
6	Ministry of the Interior and Kingdom Relations (BZK)	The Ministry of the Interior and Kingdom Relations (BZK) is responsible for public housing and the accommodation of permit or status holders. The Minister of the Interior and Kingdom Relations, also on behalf of the State Secretary for Security and Justice, coordinates with provincial governments to meet the task of housing permit holders.	Link(EN)

ABOUT THE AUTHORS

Lalaine Siruno is a researcher at the Governance and Public Policy of Innovation Unit, United Nations University-MERIT; and the Institute for Societal Policy and Innovation Research (INSPIRE), School of Business and Economics, Maastricht University, Netherlands.

Arjen Leerkes is a Professorial Fellow at INSPIRE, Maastricht University; an Associate Professor of Sociology at the Erasmus School of Social and Behavioural Sciences, Erasmus University Rotterdam; and a research fellow at the Research and Documentation Centre (WODC) of the Dutch Ministry of Justice and Security.

COPYRIGHT CLAUSE



This work is licensed by the MIRREM Consortium under a Creative Commons Attribution-ShareAlike 4.0 International License, 2020. For details, see <http://creativecommons.org/licenses/by-sa/4.0/>

THE MIRREM CONSORTIUM

University for Continuing Education Krems (Coordinator)

European University Institute

University of Osnabrück

University of Maastricht

University of Turku

Complutense University Madrid

Hellenic Foundation for European and Foreign Policy (ELIAMEP)

University of Milan

University of Potsdam

Platform for International Cooperation on Undocumented Migration (PICUM)

International Centre for Migration Policy Development (ICMPD)

Migration Policy Institute Europe (MPI-E)

University of Warsaw

Vrije Universiteit Brussel

Instituto Universitário de Lisboa (ISCTE-CIES)

Associated Partners:

Toronto Metropolitan University

University of Leicester

University of Oxford