

SUMMARY

Fewer Regulations for Migrants

Regulatory burden is a broad, abstract, and in principle neutral concept. Whether it causes problems, and if so to what degree, is largely a matter of subjective experience. It is not possible to completely eliminate the regulatory burden, but reducing it requires – and merits – constant attention.

In this advisory report, the Advisory Committee on Migration Affairs (ACVZ) focuses on the regulatory burden as experienced by migrants and sponsors (family, schools, companies) acting on their behalf (so-called referents) in the Netherlands' non-asylum-related aliens policy. The ACVZ takes 'regulatory burden in migration policy' to mean: the time, effort and money that must be invested by the migrant and/or the referent, and the restrictions they are required to accept, to comply with the conditions and requirements laid down by Dutch migration policy.

The minister of Justice asked the ACVZ to make recommendations in response to the following questions:

1. Is it possible to identify any specific bottlenecks within migration law (expressed in terms of time, money, and irritation) that could be classified under the heading of 'avoidable regulatory burden'?
2. What action would the ACVZ propose to resolve these bottlenecks and the unnecessary burden and sometimes inadequate service provision that are related to them?
3. Do the proposed solutions require changes to implementation and/or amendments to legislation, and if so, what changes are envisaged?

To answer these questions, the ACVZ studied the regulatory burden as experienced by migrants and their referents in the Netherlands' non-asylum-related migrants policy. The bottlenecks studied all related to the implementation of the Migration Act (Vw 2000), the Migration Decree (Vb 2000), the Regulation on migrants (VV 2000), the Migrants Act Implementation Guidelines (Vc 2000), the Foreign Nationals (Employment) Act (Wav), and related legislation such as the Municipal Database (Personal Records) Act (Wet GBA). Besides making a study of the existing literature on this subject, the ACVZ interviewed a range of professionals and organizations involved in the implementation and application of the rules, asking them to define the regulatory burden as experienced by migrants and referents and to suggest possible causes and solutions. In addition, SIRA Consultancy interviewed a small, random sample of migrants from non-EU countries who had come to the Netherlands for reasons of family reunion, study or employment, or who had come under the programme for highly skilled migrants (kennismigranten). Both these surveys identified numerous bottlenecks of various kinds.

The causes of the regulatory burden in migration policy

The research results led to a number of conclusions concerning the factors that are involved in perceptions of the regulatory burden in migration policy.

Regulations should comply with the qualitative criteria for legislation:

- They must be lawful and geared towards the application of legal principles;
- They must be effective and efficient;
- They must comply with the principles of subsidiarity and proportionality;
- They must be formulated such that it is possible to implement and enforce them;

- They must be harmonized with other regulations;
- They must be formulated in plain, transparent and accessible terms.

Where regulations do not comply to a sufficient degree with these quality criteria, there is a great risk of creating a regulatory burden. For instance, if the regulations conflict with other regulations, or are needlessly complex, the migrant or referent may not be able to deduce what his rights and obligations are. This may lead to unnecessary procedures. In addition, regulations that are formulated without due regard for implementation and enforcement will almost always create a regulatory burden. The survey revealed that individuals experience a regulatory burden because of the many layers of legislation, the inaccessible language of Vc 2000, the frequent changes in rules, the failure to implement European directives correctly or in good time, the diversity and periods of validity of residence permits, and the lack of cohesiveness between rules.

The way in which rules are implemented can also give rise to a regulatory burden. For instance, migrants and referents may experience a regulatory burden because implementing agencies fail to apply the rules properly or do not cooperate sufficiently with other organizations. In such cases, those concerned experience a regulatory burden because of the lack of harmonization and coordination between the implementing agencies and because these agencies fail to adopt a sufficiently customer-driven approach. Some respondents are under the impression that this is due to the multiple role of the Immigration and Naturalisation Department (IND), poor communication, and an unnecessarily strict application of the rules.

Recommendations

On the basis of its study of the literature and its own research findings, the ACVZ wishes to make several recommendations that may help to reduce the perceived regulatory burden. These are summarized in brief below. The recommendations relate exclusively to the regulatory burden that does not arise from the restrictive nature of Dutch aliens policy. The ACVZ regards the regulatory burden that arises from the restrictive nature of aliens policy as a necessary regulatory burden, since it is inherent to the specific characteristics of migration policy. In addition, the recommendations relate only to bottlenecks in relation to which it has not been established that the Modern Migration Policy bill (Momi), currently being prepared, will provide a solution.

Recommendation 1.

When drafting new legislation, take more account of the quality criteria of simplicity, clarity, and accessibility.

The most important contributory factor in the perceived regulatory burden is the complexity of migration policy.

A. Reduce the number of different layers of migration legislation by abolishing the VV 2000. The articles included in this Regulation may be incorporated into the Vw 2000, the Vb 2000, and the Vc 2000.

B. Include in the Vw 2000, as far as is possible, the most important rights and obligations of migrants and referents, and the basic requirements for admission. If the most important rights and obligations are in the Vw 2000, fewer cross-references to other rules will be necessary, and important rights and conditions will be easier to find.

C. List only a few of the broad reasons for which migrants may come to the Netherlands in the Vw 2000, reasons covering all migrants, with fewer variations within each category, conditions for admission and restrictions, and only differentiating between the main categories. This will not only simplify the legislation, but also make it possible to respond more flexibly to developments in migration and to changes in the stated 'purpose of stay'.

D. Ensure that the Wav contains simple and equivalent rules for the different categories of migrants who are required to apply for an employment permit (twv).

E. Ensure that the Vc 2000 indicates clearly:

- the distinction between policy rules and other kinds of information, by separating policy norms from guidelines and operating processes;
- the legal basis of the policy rule or amendment, including the relevant provisions of international law.

Recommendation 2.

Reduce the number of application and extension procedures, as well as procedures for changes.

F. Introduce a wider-ranging, national, multiple-entry residence right of residence for migrants who wish to come to the Netherlands regularly to do temporary work that does not fall under the heading of seasonal labour.

G. Abolish the procedure devised to prevent convenience marriages (the M46-procedure) and curb convenience marriages instead by carrying out targeted checks afterwards, for instance in cases in which suspicions of a convenience marriage have been raised.

H. Give highly-skilled migrants (kennismigranten) the option of staying in the Netherlands for a longer period than at present (three months) to seek other employment enabling them to re-qualify under this heading.

This recommendation could be followed up in two different ways:

- Highly-skilled migrants who have built up entitlement to unemployment benefit could be given a period to find a new job equal to the duration of their unemployment benefit (in cases in which this period exceeds three months).
- Alternatively, a solution might be devised similar to the rules for student migrants who have graduated in the Netherlands, regarding the time allocated for the purpose of seeking employment.

Recommendation 3.

Ensure that all the regulations falling under the heading of migration law are properly harmonised with related and international legislation.

It became clear from the present study that there is sometimes a lack of coherence between the Vw 2000 on the one hand, and the Wav, the Wet GBA, fiscal regulations and international regulations. This may undermine the claims as well as the rights and obligations of migrants and referents.

I. Ensure that the rules for registering with the GBA and the issuing of non-migrant residence permits are better attuned to one another.

Recommendation 4.

When drafting as well as when evaluating new legislation, a systematic effort should be made to find ways of reducing the regulatory burden for migrants and referents, making the best possible use of knowledge, ideas and experience from the field.

J. Ensure that the evaluation of the Vc 2000 is performed by an independent body, in contrast with the clean-up operation in 2006. The experiences of migrants and referents should be incorporated into this evaluation.

K. When evaluating Momi, pay special attention to the regulatory burden that referents experience as a result of this Act. This is particularly important because this Act had not yet been introduced when the present study was carried out, so that at the time of issuing this advisory report, the precise impact of this new legislation on the regulatory burden are not yet clear.

Recommendation 5.

Introduce a designated migration desk for non-asylum migrants, which should include, in any case, the IND, the Employee Insurance Agency (UWV), the municipal authorities and the tax department.

The poor service complained of by migrants and referents derive in part from a lack of effective cooperation between the implementing agencies. In particular, the mutual cooperation between the IND, the Employee Insurance Agency (UWV), the municipal authorities and the tax department is in need of improvement.

L. Set up designated migration desks for non-asylum migrants. These desks could serve as the front office for as many organisations as possible with which migrants and referents have contact when establishing themselves in the Netherlands.

Recommendation 6.

When preparing the initial decision, in the case of any lack of clarity in the application, seek clarification from the applicant more frequently and at an earlier stage.

M. Draft general operational guidelines directing the IND, in cases in which migrants have provided insufficient or unclear information, to first contact the person concerned to clarify the matter (in line with the current procedure in cases involving highly skilled migrants) before making a decision. In this way, the IND can fulfil its obligation to investigate in a more active way.