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NOTE

from :	General Secretariat
to :	FRONTIERS Working Party/Mixed Committee (Iceland and Norway)
Subject :	Controls of minors who are nationals of Member States

Delegations will find enclosed the English version of the reply from the Netherlands delegation.

NETHERLANDS

Subject: Questionnaire on controls on minors who are nationals of the Member States

Question 1:

Minors are persons who have not yet reached 18 years of age and are not married.

Question 2:

No.

Question 3:

(see reply to question 2, not applicable)

Question 4:

No enquiries are made here.

Question 5:

No, but the unaccompanied minor must meet the usual entry and residence conditions (see Border Control Circular A6/2)

Question 6:

(see reply to question 5).

Question 7:

Minors are controlled in the same way as adults, also when they are accompanied by persons who exercise parental authority over them.

Thus, both entry control and exit control vary, as they do for adults, depending on whether the minor is a national of a third country, a Member State or the Netherlands.

Question 8:

(see reply to question 7).

Yours sincerely,
Head of the Immigration Policy Department

2. Entry conditions

2.1. General

In connection with entry conditions, a distinction needs to be made between "short stay or transit" (with in general an intended length of stay of not more than three months - see 2.2) and "long stay" (with an intended length of stay of more than three months – see 2.3).

2.2. Short stay or transit

Under Articles 6 and 8 of the Aliens Act the following general entry conditions are laid down:

- a. compliance with requirements when crossing the border (see A5);
- b. possession of a valid document for crossing the borders (see 2.2.1);
- c. possession of adequate means of subsistence (see 2.2.2);
- d. not representing a threat to law and order, public policy, national security or (good) international relations of the Schengen States (see 2.2.3).

2.2.1. Documents for crossing borders

An alien wishing to enter the Netherlands for a short stay or transit must be in possession of a valid document authorising him to cross the border. As a rule, this will be a valid passport bearing a valid visa where required.

Exceptions are listed in 2.2.1.1.

NB: Transit must be permitted to a holder of a residence permit or return visa issued by one of the Schengen States. For this, see Annex CII. This is without prejudice to the requirement to possess an identity document or travel document.

a. Passport

Possession of a valid (national) passport is a general point of departure. The passport requirement is imposed, inter alia, as a guarantee of return.

"Passport" means a document for crossing the border drawn up partly in English or French, by virtue of which the holder is authorised to travel abroad and return to the country of issue.

The passport must have been issued by the competent authorities of a State recognised by the Netherlands. It must bear a photograph showing a good likeness of the holder and must be signed by him.

In addition, it must generally state the holder's family name, forenames, nationality, place of birth, date of birth. The term of validity of the passport must exceed the duration of the intended stay.

The above applies also to other recognised documents as referred to in annexes 3a and 3b of the Aliens Regulation ("*Voorschrift Vreemdelingen*").

For checks on misuse, forgery etc. of documents for crossing the border (see A4/2.2.3).

b. Visa

Where required, the passport must bear:

- either a valid transit visa, where transit through the Schengen area or the Netherlands is intended, with a stopover of not more than five days (see A7/2.1.4.3);
- or a valid travel visa, where a short stay in the Schengen area or in the Netherlands is intended (see A7/2.1.4.2).

A visa declaration, for which a separate pre-printed form is used, may take the place of the visa sticker in the passport. In that case, the holder of the declaration must at all times be in possession of the document referred to therein.

For the provision of visa facilities at the border (in the absence of the required valid transit or travel visa – see A7/3).

For the provision of a laissez-passer at the border (in the absence of the required passport or other document for crossing the border – see A7/4).

2.2.1.1. Exceptions**2.2.1.1.1. General**

There are exceptions to the general points of departure in 2.2.1 in order to facilitate travelling; they are based mainly on international agreements. Apart from various exceptions to the passport and visa requirements (see 2.2.1.1.2 and 2.2.1.1.3), there is also the possibility of waiver (see 2.2.1.1.4), as well as arrangements for nationals of non-recognised States and governments (see 2.2.1.1.5).

2.2.1.1.2. Exceptions to the passport requirement

Other documents for crossing the border which may help to gain entry in certain cases include:

- national identity cards;
- collective passports;
- (for minors) the passport of a parent, guardian or grandparent;
- travel documents for aliens and refugees;
- special travel documents for seamen (seamen's books);
- Flight Crew Member Licences;
- Crew Member Certificates.

Annex 3a to the Aliens Regulation lists exceptions to the passport requirement by nationality. It also indicates the lengths and purposes of stay for which the exceptions apply.

The documents for crossing the border with which a foreign national may enter the Netherlands on the basis of his nationality and on the nature and length of his stay may also be ascertained from the Benelux Collection of Regulations, Section III.

Arrangements for a number of special categories of persons are set out in Annex C2 and also in Annex 3b to the Aliens Regulations. These arrangements are covered in B3 to B12.

2.2.1.1.3. Exceptions to the visa requirement

There are many exceptions to the visa requirement, mainly under the Convention on the waiver of the visa requirement of the Benelux or Schengen countries for third countries.

The following are exempted:

- nationals of countries listed in Annex 3a to the Aliens Regulations (they do not need a visa for short stays or transit but as a rule, require a provisional residence authorisation (*Machtiging tot Voorlopig Verblijf*) for a longer stay is required);
- foreign nationals in possession of a valid residence permit issued by a Schengen State (see also Annex C8);
- holders of a refugee travel document who are in possession of a residence permit issued by a Schengen State;
- holders of a refugee travel document who are lawfully resident in one of the countries referred to in Annex 3b(1) to the Aliens Act; this does not apply to entry into France and Greece;
- holders of a stateless person's travel document who are also in possession of a residence permit issued by a Schengen State: this does not apply to entry into Portugal;
- holders of Crew Member Licences or Crew Member Certificates, provided that they satisfy the requirements set out in B11/2.

2.2.1.1.4. Waiver of the passport or visa requirement (Article 42 of the Aliens Order – *Vb*)

For short stays or transit, the Minister for Justice may waive the passport or visa requirement in special cases.

This applies, for example, to foreign nationals who need to travel for very urgent reasons or ought not be refused entry on humanitarian grounds.

2.2.1.1.5. Travel documents of non-recognised States and governments

The holder of a travel document issued by a government or state not recognised by any of the Schengen States may be allowed entry (see A2) where he is also in possession of a visa declaration referring to that document. If necessary, he may still be issued with a separate visa declaration at the border, subject to authorisation (see A2).

2.2.2. Adequate means of subsistence

A foreign national is considered to have adequate means of subsistence for a short stay or transit where he is able to meet:

- the expenses arising from his stay;
- the expenses of the return journey to his country of origin, or of the transit to a third country where his admission is guaranteed.

The means in question may be those held by the foreign national on entry (e.g. money, return ticket) but also, in certain cases, means which he can acquire from lawfully permitted work (of a temporary nature, for a maximum period of three months). Whether the means available to the foreign national are adequate depends, *inter alia*, on the length of the intended stay, the destination, personal circumstances, and the nature of the means of transport used. No fixed criteria can be indicated in this connection as there are various influencing factors which may vary from case to case.

In principle however, foreign nationals travelling on their own account must be capable of meeting the expenses of their stay and their accommodation, which (for the Netherlands) amounts to at least 75 NLG per person per day.

Guideline amounts (and an explanatory note) applicable to each of the Schengen countries individually are given in Annex C9. These guideline amounts are updated annually.

Where there is uncertainty as to whether the foreign national has access to adequate means of subsistence, the person concerned may be allowed conditional entry. The conditions concern the provision of a financial security (see 4.3.1).

2.2.2.1. Exceptions

Control of means of subsistence is waived in the case of:

- EC/EEA nationals (see B3/3.1.1);
- with diplomatic officials status and other privileged persons (see B2);
- foreign nationals admitted into the Netherlands for a long stay (see B4/2);
- holders of a long-stay visa, where they are in transit to another Schengen State (see A7/2.8).

2.2.3. No threat to law and order, public policy, national security or (good) international relations

2.2.3.1. General

One of the entry conditions is that the foreign national must not represent a threat to law and order, public policy, national security or (good) international relations. The terms "law and order" and "public policy" also cover moral probity and public health.

A threat to public order may also be considered to exist where the foreign national is notified in the national register of wanted persons (*OPS*) or the national "Schengen Information System" (*NSIS*). Guidelines are given in the *OPS* and *NSIS* for the procedure to be followed in case of such notification.

Concerning notifications relating to either the implementation of the Aliens Act or the Convention on the Implementation of the Schengen Agreement (see A9).

Checks are made via the *OPS* and *NSIS* are avoided as far as possible in the case of officials with diplomatic status and other privileged persons (see B2).

2.2.3.2. Prevention of undesirable political activities

Where reasonable grounds exist for fears of political activities causing a threat to law and order, public policy, national security or international relations, contact must be sought with the *IND* (see A2).

At the behest of the Minister for Justice, the following notification may be made to a foreign national who intends to give a public speech or lecture: "In making your speech, lecture etc., you should refrain from statements which may threaten to disturb the Netherlands' democratic society, or represent a threat to the Kingdom's good relations with other powers".

The Netherlands-based organisation which is arranging the event is notified by the *IND* accordingly.

2.3. Long stay

For entry with a view to a "long stay", the following conditions apply:

- a. compliance with requirements for crossing the border (see A5);
- b. possession of a valid document for crossing the border, hereinafter referred to as "travel document" (see 2.3.1);
- c. possession of adequate means of subsistence (see 2.3.2);
- d. not representing a threat to law and order, public policy, national security or international relations of the Schengen States (see 2.3.3).

2.3.1. Documents for crossing the border

A foreign national wishing to enter the Netherlands for a long stay, without already being authorised to do so under Article 9 or Article 10 of the Aliens Act, must comply with the following:

- a. he must have a valid passport (see 2.2.1.a);
- b. where required the passport must bear a valid provisional residence authorisation (*MVV – machtiging tot voorlopig verblijf*).

The visa/*MVV* requirement has been laid down to allow the Netherlands authorities to investigate before the foreign national's arrival whether there is any reason against his stay.

The *MVV* is a national visa which is issued by a Netherlands diplomatic or consular representation abroad after prior authorisation by the Visa Service. In principle, issue of an *MVV* abroad precedes the granting in the Netherlands of a residence permit by the Chief Officer of the police district to which the commune in which the foreign national intends to take up residence belongs. The *MVV* states the date by which the foreign national must enter the Netherlands. The *MVV* authorises transit through the other Schengen States, provided that the person concerned is in possession of a valid document for crossing the border, is not notified as being refused entry (*NSIS*) and does not represent a threat to law and order, public policy or international relations.

The foregoing is also applicable to persons in possession of comparable documents issued by the other Schengen States.

An *MVV* declaration in the form of a pre-printed form may take the place of the *MVV* in the passport. In such cases the holder of the declaration must at all times be in possession of the document referred to therein.

For a specimen of a visa sticker used as an *MVV*, see the Manual for Issue and Completion of the Schengen Visa Sticker.

2.3.1.1. Exemption from the *MVV* requirement by nationality

The following are exempted from the *MVV* requirement:

- a. nationals of the States which are signatories to the Convention on the European Economic Area (EC/EEA), namely Belgium, Germany, Denmark, France, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, the United Kingdom of Great Britain and Northern Ireland, as well as Finland, Norway, Austria, Iceland and Sweden;
- b. furthermore, nationals of Australia, Canada, Japan, Monaco, New Zealand, the United States of America and Switzerland (including Liechtenstein).

In all cases where a foreign national is exempted from the *MVV* requirement for a long stay, he is also exempted from the visa requirement for a short stay or transit.

2.3.1.2. *Travel documents issued by non-recognised States or governments*

The holder of a travel document issued by a State of government not recognised by any of the Schengen States may be allowed entry where he is also in possession of an *MVV* declaration referring to that travel document.

2.3.2. Adequate means of subsistence

Replies to questions whether foreign nationals may be admitted to the Netherlands for long stays, whether they are required to have adequate means of subsistence and what may be evidence of such means of subsistence, are determined by international agreements to which the Netherlands is a party and by the admission policy followed on the basis of the Aliens Act (see 1.3). The answering of such questions is beyond the remit of the border control service.

Foreign nationals who are found to be contemplating a long stay in the Netherlands or are suspected thereof, but are not in possession of a valid *MVV*, may in certain cases be allowed conditional entry subject to authorisation by the *IND* (see 4.4.6 and 4.4.7).

2.3.3. No threat to law and order, public policy or national security (Aliens Act, Section 8(1)(c))

The legislation here is analogous to that for "short stays" (see in this connection 2.2.3).