

## Playing Hard(er) to Get: The State, International Couples, and the Income Requirement

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### Abstract

In recent years, several European countries have tightened the criteria for the legal immigration of a partner from outside the EU. In the Netherlands, the income requirement for ‘family formation’ was raised in 2004 from 100% to 120% of the minimum wage, potentially excluding about thirty percent of the working population from eligibility. The outcomes of this measure for international couples and, on the aggregate level, for migration flows were examined on the basis of administrative trend data and fifty in-depth interviews among international couples. It is demonstrated that the potential power of governments to intervene in partner migration risks being at odds with strongly felt cultural values surrounding partner choice and family life. Partner immigration decreased substantially, especially among poorer groups (ethnic minorities, women, youngsters). At the same time, the measure put pressure on the well-being of a segment of the international couples. In 2010, the European Court of Justice ruled that the Dutch income requirement contradicts the EU directive on family reunification.

### Keywords

marriage migration, income requirement, policy effects, migration control, international couples

## 1. Introduction

West European countries pursue a restrictive immigration policy towards non-European countries.<sup>1</sup> Policies are most restrictive in relation to illegal migration, labour migration, and asylum migration. In recent years, various European countries (Germany, France, Denmark, the Netherlands, Norway) have begun to implement measures that are likely to limit spouse or partner immigration more than in the past, or have announced plans to do so (the United Kingdom).<sup>2</sup>

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<sup>1</sup> Andreas, P. and T. Snyder (Eds.) (2000) *The Wall around the West: State Borders and Immigrant Controls in North America and Europe*. Lanham: Rowman and Littlefield Publishers; Cornelius, W., T. Tsuda, P. Martin and J. Hollifield (Eds.) (2004) *Controlling Immigration: A Global Perspective*, Stanford: Stanford University Press. Lavanex, S. (2006) Shifting up and out: The foreign policy of European immigration control, *West European Politics*, 29(2), pp. 329–350; Engbersen, G. and D. Broeders (2009), “The state versus the alien: Immigration control and strategies of irregular immigrants”, *West European Politics*, 32 (5), pp. 867–885.

<sup>2</sup> In Denmark international couples (involving non-EU partners) now have to pay a deposit of about

Governments stipulate various conditions for the legal immigration of a foreign partner. As such, these regulations are not new. They vary from country to country, but usually include public safety requirements, age requirements, housing requirements, and income requirements. The income requirements in particular, are meant to ensure that newcomers will not become a public charge.

A relatively distinctive feature of partner migration – at least in relation to labour migration – is that governmental regulations may have far-reaching personal consequences for couples who have difficulty meeting the restrictive admission requirements. In these cases, the government intervenes in the heart of what is generally, especially in liberal democracies, regarded as the private sphere: the nuclear family.

This case study focuses on the effects of the 2004 increase of the Dutch income requirement for ‘family formation’, a Dutch policy term that denotes that, contrary to ‘family reunification’, a couple has not previously formed a household outside of the Netherlands. Since the 1990s, the Dutch government has raised the income requirement for partner immigration repeatedly. In 1993, it was stipulated that for married couples an income of at least 70% of the adult minimum wage would be required for the legal immigration of a partner from outside of the European Union; for unmarried couples this requirement was 100%. Then, in 2001, the income requirement for married couples was raised to the level for unmarried couples. In 2004, the requirement for *family formation* was lifted to the level of 120% of the full-time minimum wage for persons aged 23 and above, or, at the time of writing, about €18,200 per year before taxes (hereafter: 120%). (The nominal level of the income requirement is adjusted twice a year because the minimum wage is connected to developments in the average wage level in the Netherlands.) The income has to be stable, meaning that a labour contract valid for at least a year has to be demonstrated. In the same period, the government introduced or strengthened various other measures to regulate and reduce partner immigration.

This study’s main research problem can be stated as follows: To what extent are national governments in liberal democracies capable of influencing partner migration decisions and partner selection patterns by stipulating restrictive income

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€ 7.400, which is cashed if the couple applies for welfare. France and Germany have recently implemented integration exams in the country of origin as a requirement for partner immigration, and the British government has announced similar plans. Since 2010, the Norwegian income requirement has to be met by the sponsor alone, whereas before 2010 the spouses’ *joint* income was taken into consideration. See Rubin, L. (2004), “Love’s Refugees: The Effects of Stringent Danish Immigration Policies on Danes and Their Non-Danish Spouses”, *Connecticut Journal of International Law* 20: 319–322. WODC/INDIAC (2009) *Internationale gezinsvorming begrensd? Een evaluatie van de verbod van de inkomens- en leeftijdsseis bij migratie van buitenlandse partners naar Nederland* [International Family Formation Limited? An Evaluation of the Increase of the Income and Age Requirement for the Migration of Foreign Partners to the Netherlands] The Hague: WODC. H. Eggebø (2010), “The Problem of Dependency: Immigration, Gender, and the Welfare State”, *Social Politics* 17 (3): 295–322.

requirements, and what are the personal consequences for couples directly affected by such measures? Several more specific questions are implied in this problem. (1) To what extent did the increase in the income requirement cause a decrease in partner immigration and, if so, among what groups? (2) Do couples who fail the income requirement when they begin to consider forming a household in the Netherlands eventually succeed in their plans, and if so, how? (3) What are the implications of the increased income requirement for the well-being of couples who (initially) do not meet it?

These research questions are socially relevant in a time when heightened globalization has promoted the genesis of a global relationship market.<sup>3</sup> In the Netherlands alone, about 15,000–20,000 non-EU nationals immigrate for family reasons annually, including 7,000–12,000 partners who are involved in ‘family formation’.

The study contributes to the academic literature on the effects of immigration policy on migration flows in two ways. Firstly, it increases our insight in whether, and how, restrictive immigration policies affect partner migration patterns, an underdeveloped theme in the field of migration studies. Because of the increased governmental regulation of international migration, it is important for this theme to be set higher on the social science research agenda.<sup>4</sup> More indirectly, the study also illustrates the precariousness of governmental efforts to restrict partner immigration in a liberal democracy.<sup>5</sup>

The next section provides additional information on partner immigration to the Netherlands, and the way it is regulated. Then, the theoretical starting points guiding the analysis are discussed, the data sources are described, and the findings are presented. In the conclusion, we return to the main research problem, and reflect on the implications for migration theory.

## 2. Partner Immigration to the Netherlands

Partner immigration to the Netherlands – and other European countries – is a heterogeneous phenomenon. In the 1970s and 1980s, the inflow was dominated by *family reunification* (mostly women and children reuniting with husbands/fathers who had migrated to the Netherlands as labour migrants in the 1960s and

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<sup>3</sup> Lievens, J. (1999) “Family-Forming Migration from Turkey and Morocco to Belgium: The Demand for Marriage Partners from the Countries of Origin”, *International Migration Review* 33 (3), pp. 717–744. Constable, N. (2003) *Romance on a Global Stage. Pen Pals, Virtual Ethnography, and “Mail order” Marriages*. Berkeley and Los Angeles: University of California Press.

<sup>4</sup> This is also advocated in Massey, D., J. Arango, G. Hugo, A. Kouaouci, A. Pellegrino and J. Taylor (2005), *Worlds in Motion: Understanding International Migration at the End of the Millennium*. Oxford: Clarendon Press.

<sup>5</sup> Joppke, C. (1998), “Why Liberal States Accept Unwanted Immigration”, *World Politics* 50 (2), pp. 266–293.

70s) involving ethnically endogamous couples.<sup>6</sup> In the Netherlands, this mostly involved first-generation ‘Turks’ and ‘Moroccans’.<sup>7</sup> Later on, in the 1980s and 1990s, *family formation* gained more prominence, as a significant percentage of first-generation and second-generation immigrants selected a partner from the family’s country of origin, instead of reuniting with a partner they had lived with before that partner immigrated to the Netherlands. In the same period, the Netherlands witnessed an increase of ethnically exogamous relationships. It became not uncommon for the native ‘Dutch’ to bring a non-EU partner to the Netherlands. This mostly involved men with a female partner from Eastern Europe, South-east Asia or Latin America.<sup>8</sup> Partner immigration for ‘Dutch’ women, often involving African men, also began to represent a modest but notable segment of the flows.<sup>9</sup> Thus, partner immigration also began to involve divorced men who found a distant spouse via the Internet, backpackers who fell in love during their ‘world tour’, women who entered into relationships with rejected asylum seekers living in the Netherlands, and students who met their partners at highly internationalized university campuses. All in all, approximately 18 000 non-EU adults settled in the Netherlands because of ‘family reasons’ in 2004.<sup>10</sup> Of these, about 11 000 people immigrated because of family formation (compare Table 1 in Section 5).

### 2.1. *Regulating Partner Immigration*

For four main reasons, successive Dutch cabinets have regarded the magnitude and (perceived) characteristics of partner immigration as problematic. Firstly, it is assumed that partner immigration tends to involve couples who are poorly qualified to make a living in the Netherlands without public support (the issue

<sup>6</sup> Hooghiemstra, E. (2003), *Trouwen over de grens: Achtergronden van partnerkeuze van Turken en Marokkanen in Nederland*. [Marrying across the Border: Backgrounds of the Partner Choice of Turks and Moroccans in the Netherlands], The Hague: Sociaal en Cultureel Planbureau. PhD thesis, University of Amsterdam. Bonjour, S. (2007) “Gezin en grens: Debat en beleidsvorming op het gebied van gezinsmigratie in Nederland sinds de jaren vijftig.” [Family and Border: Debate and Policy Formation on the Terrain of Family Migration in the Netherlands Since the 1950s], *Migrantenstudies* 23 (1), pp. 2–23.

<sup>7</sup> Ethnic groups are put in quotation marks when we refer to national origin rather than nationality. ‘Turks’ are first or second generation immigrants from Turkey. ‘Dutch’ sponsors are born in the Netherlands and have two parents born in the Netherlands. This definition reflects the definition by Statistics Netherlands.

<sup>8</sup> Van der Zwaard, J. (2008) *Gelukzoekers: Vrouwelijke huwelijksmigranten in Nederland* [Happiness Seekers: Female Marriage Migrants in the Netherlands], Amsterdam: Artemis & Co. Suksomboon, P. (2009), *Thai Migrant Women in the Netherlands: Cross-Cultural Marriages and Families*. Leiden: University of Leiden (PhD thesis).

<sup>9</sup> De Hart, B. (2003) *Onbezonnen vrouwen: Gemengde relaties in het nationaliteitsrecht en het vreemdelingenrecht*. [Foolhardy women: Mixed relationships in the national and immigration law] Amsterdam: Aksant.

<sup>10</sup> This includes family formation and family reunification. Most immigrants are foreign partners, even if parents, for example, may also be brought to The Netherlands. Source: Statistics Netherlands (online at: <http://statline.cbs.nl>, visited January 2010).

of family migrants' economic performance has also been discussed in other countries).<sup>11</sup> There is no direct evidence on the economic performance of international couples. However, Non-Western immigrants, as well as their children, are indeed somewhat overrepresented among welfare receivers in the Netherlands, and non-EU partners are characterised by relatively low educational levels, in spite of a substantial share of foreign partners who have completed tertiary education.<sup>12</sup> It was also feared that a continuing inflow of poorer non-Western groups would perpetuate other social problems caused by – or at least attributed to – these minorities. Apart from unemployment figures, there was a concern about the overrepresentation of ethnic minorities in police statistics. Secondly, several political parties resented that almost three decades after the discontinuation of the official recruitment of guest workers in the mid 1970s, most marrying 'Turks' and 'Moroccans' were still bringing a partner from their country of origin to the Netherlands.<sup>13</sup> These marriage patterns were generally perceived as a symptom of a lack of 'integration' in the Netherlands. Thirdly, in the political debate it was often claimed – although empirical evidence is lacking – that a substantial part of the relationships are in fact marriages of convenience, which are chiefly formed to circumvent restrictive policies regarding labour and asylum migration.<sup>14</sup> Fourth, there is a growing concern about forced marriages among couples with an Islamic background.

Immigration by partners of the 'Dutch' is rarely considered problematical, although it equals, and increasingly surpasses, the combined inflow of 'Turks' and 'Moroccans', the country's two biggest non-Western minorities.

The Dutch government argued that a requirement of 120% is still in line with the principle that newcomers should not become a public charge: the right to support called 'bijzondere bijstand' tends to end above this level of income. 'Bijzondere bijstand' is a kind of special welfare that is provided by municipalities depending on the individual situation of applicants; examples are costs for joining

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<sup>11</sup> Duleep, H. and M. Regets (1996), "Admission Criteria and Immigrant Earning Profiles", *International Migration Review* 30 (2), pp. 571–590.

<sup>12</sup> In 2006, 3.4% of non-Western immigrants in the potential working population received welfare (first and second generation combined). The national average was 2.7%. Source: Statistics Netherlands (online at: <http://statline.cbs.nl>; visited December 2009). Of all migrants who had to start the Dutch integration course in 2003 52% had completed lower secondary education or had attained a lower educational level (6% was illiterate), 22% had higher secondary education, and 26% had completed tertiary education. Source: Significant (2004) *Inburgering nieuwkomers. Kwalitatieve rapportage 2003*. [Integration newcomers. Qualitative report 2003] Barneveld: Significant. About two-third of the migrants concerned were 'family formers / family reunifiers'. In 2007 the distribution of these educational levels for the Dutch population as a whole was 27%, 42% and 31%. Source: OECD (2009) *Education at a Glance 2009*. Paris: OECD.

<sup>13</sup> Nearly sixty percent of all 'Turks' marrying in 2002, opted for a partner from Turkey. For 'Moroccans' this figure was about fifty percent (see Figure 1).

<sup>14</sup> De Hart, B. (2006), "Introduction: The Marriage of Convenience in European Immigration Law", *European Journal of Migration and Law* 8, pp. 251–262.

sports clubs, school trips, and special medical costs. There is suggestive evidence, however, that the measure was also intended to limit immigration among poorer non-Western groups, regardless of whether these newcomers will become a public charge: initially, the government proposed to increase the income requirement to 130%, but eventually one coalition member objected. Furthermore, the measure was introduced with the explicit aim to decrease family-forming migration by 45%, while no evidence was presented indicating that 45% of the international couples was benefiting from ‘bijzondere bijstand’.<sup>15</sup> Finally, policy documents indicate that the measure was primarily aimed at limiting the number of chain migrants among ‘Turks’ and ‘Moroccans’.<sup>16</sup>

As previously mentioned, the income requirement also stipulates that the income must be *stable*: the person who wants to bring a partner to the Netherlands – hereafter called the *sponsor* – must demonstrate a labour contract valid for at least a year. Moreover, (s)he has to meet an income requirement during the first three years after that the foreign partner has been given a residence permit; the income requirement for *extensions* of the residence permit is 100% of the minimum wage. Sponsors of nationals of EU Member States or countries of the European Economic Area (EEA) are exempted from the income requirement; in principle, EU nationals can stay in the Netherlands regardless of whether they have a relationship with a Dutch citizen or legal denizen.

An income requirement of 120% is relatively restrictive: almost one in three workers in the Netherlands earns less (this figure includes part-timers).<sup>17</sup> Among full-time workers this share is about one in ten, and among full-timers, ages 20 to 25, the share is almost one in two. An additional 300,000 people, or about two and a half percent of the working population, do not qualify because they receive welfare benefits from the government. Finally, there are sponsors with sufficient income, who do not qualify because their income is considered unstable.

Various additional measures to regulate partner immigration were introduced or strengthened in recent years: age requirements (raised in 2004 from 18 to 21 years for both partners), legal charges (raised several times, the costs of a residence permit are now approximately € 1.000), a basic language and integration require-

<sup>15</sup> Source: Dutch Parliament 2004–2005, 19 637, nr. 873.

<sup>16</sup> See *Nota van Toelichting*, Staatsblad, 2004, nr. 496. The illustrations supporting the government’s argument for restricting partner immigration only pertain to ‘Moroccans’ and ‘Turks’.

<sup>17</sup> In 2006, there were 7.83 million people in private households aged between 20 and 65, who had an income from labor or a business. Of these, 2.47 million people (32%) had a personal annual income below € 20.000 (with € 22.000 the 120% criterion is higher). Approximately 0.9 (11%) million people aged between 20 and 65 had a personal income below € 16.000 (The 100% criterion is about € 18.200). These figures include part-timers, such as students and mothers. In 2005, 8.5% of the full-timers, ages 15–65, earned less than € 20.000 (about 5% less than € 18.000). In the age category 20–25 this share was 45% (30% less than € 18.000). The number of persons with sufficient but ‘unstable’ income is unknown. About five percent of the workers in medium to highly skilled professions do not have a permanent contract. (Source of all figures: Statistics Netherlands, online at: <http://statline.cbs.nl>; visited July 2009 and June 2010).

ment in the country of origin (introduced in 2006; the exam costs € 350) and a more extensive language and integration requirement in the Netherlands (implemented in 1998; the exam costs € 270). The increase in the income requirement and other measures were supposed to reduce immigration *and* enhance immigrant integration.<sup>18</sup>

In 2003, the EU introduced the directive on family reunification, which stipulates the conditions under which non-EU nationals legally residing in EU Member States can claim a right to family reunification.<sup>19</sup> In 2010, the European Court of Justice ruled that the Dutch income requirement contradicts this directive; it was ruled that an income requirement of 100% is allowed, but only as a reference amount, meaning that, if applicants do not meet it, applications are assessed individually. It was also ruled that the Dutch distinction between family formation and family reunification has no basis in European law. The level of 120% was considered unlawful because, among other things, “measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law”.<sup>20</sup> Following the decision, the Minister of Justice decided that an income requirement of 100% would now be applied to all new applications, also those submitted by Dutch citizens, even if the EU directive only pertains to sponsors who are non-EU nationals. European law could probably have this ‘spill-over’ effect because most citizens would consider it illegitimate if third-country nationals were treated better than nationals. In this respect, it is worth mentioning that third-country nationals are often poorer non-Western immigrants who tend to have a low status position in the country’s ethnic hierarchy.<sup>21</sup> It is already controversial that Dutch sponsors have to meet more restrictive rules than EU citizens. In the course of 2010, the income requirement has been formally re-adjusted to 100%.

The court judgment confirms that the new measures to restrict partner immigration are controversial from a societal and legal point of view. Eventually, a larger number of policies may turn out to be inconsistent with European Law as it is currently phrased.<sup>22</sup> It also has to be reported that the increase of the income requirement to 120% was politically controversial within the Netherlands: it was supported by 88 out of 150 parliamentarians (left-wing parties in the opposition

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<sup>18</sup> For more information on the latter objective see WODC / INDIAC, *supra* note 2.

<sup>19</sup> 2003/86/EG, OJ L 251, pp. 12–18.

<sup>20</sup> *Chakroun* case C 578/08, line 44.

<sup>21</sup> See also Hagendoorn, L. (1995), “Intergroup Biases in Multiple Group Systems: The Perception of Ethnic Hierarchies”, *European Review of Social Psychology* 6 (1), pp. 199–228.

<sup>22</sup> Examples in point are the distinction according to nationality with regards to the civic integration examination abroad (see note 18) and the question of whether increasingly restrictive policies can be applied to Turkey in the light of the 1963 Association Agreement between Turkey and the European Community.

opposed it). This article illustrates why the new restrictions on partner migration are controversial.

### 3. Theoretical Starting Points

Migration theories stress economic factors and social networks in understanding international migration. As international migration is increasingly regulated by governments, migration scholars acknowledge that more attention needs to be paid to the intervening role of the state in shaping international migration.<sup>23</sup>

In principle, the state has substantial power over who obtains a residence permit and who does not. For instance, legal immigration levels to the US dropped considerably after restrictions on immigration were introduced in the 1920s.<sup>24</sup> Even if a fall in legal migration may lead to a rise in illegal migration, the former is unlikely to offset the latter. Practices of border control increase the ‘transaction costs’ of international migration substantially.<sup>25</sup> ‘Unwanted’ immigrants are pressured to use the services of a costly human smuggler, and may have to accept very hazardous journeys, if they want to be internationally mobile.<sup>26</sup> Furthermore, restrictive immigration policies are likely to lower the expected income in the destination country relative to income expected at home.<sup>27</sup> Illegal immigrants have, for example, slimmer chances of earning a high income than legal immigrants.

Other scholars are sceptical about the impact of policy on immigration. Firstly, they argue that legal constraints greatly limit the power of governments about who to admit, either because the ‘international human rights regime’ imposes external restrictions on sovereignty,<sup>28</sup> or because liberal states tend to be restrained internally by constitutional stipulations.<sup>29</sup> This is especially true for asylum and family migration. Secondly, there is disagreement on the extent to which restrictive policies are capable of deterring immigration. It has been argued, for instance, that illegal migration is likely to remain attractive in the presence of strong social

<sup>23</sup> Massey et al., *supra* note 4.

<sup>24</sup> Ngai, M. (2004) *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton: Princeton University Press.

<sup>25</sup> Massey et al., *supra* note 4.

<sup>26</sup> Cornelius, W. (2001) “Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy”, *Population and Development Review* 27 (4), pp. 661–685; Carling, J. (2007), “Migration control and migrant fatalities at the Spanish-African borders”, *International Migration Review* 41 (2), pp. 316–343.

<sup>27</sup> Todaro, M. and L. Maruszko (1987), “Illegal migration and US immigration reform: A conceptual framework”, *Population and Development Review*, 13 (1), pp. 101–114.

<sup>28</sup> Jacobson, D. and G. Ruffer (2003), “Courts across Borders: The Implications of Judicial Agency for Human Rights and Democracy”, *Human Rights Quarterly* 25, pp. 74–92; Sassen, S. (2006) “The De-nationalizing of the State and the Re-nationalizing of Political Discourse over Immigration”, in M. Giugni and F. Passy (Eds.), *Dialogues over Migration Policy*, Lanham: Lexington Books, pp. 57–65.

<sup>29</sup> Joppke, *supra* note 5.



and economic push-and-pull factors.<sup>30</sup> It might be hypothesized that the same will be true for partner migration, also because strong emotional ‘push-and-pull’ factors may be involved.

This study primarily contributes to the debate on whether restrictive immigration policy deters immigration. It shows that this debate departs from a one-sided perspective, as it assumes that restrictive measures merely increase the costs for unwanted migrants, i.e. for the actors in the country of origin. Yet it can be argued that the state may also selectively increase the economic and psychological costs of citizens and denizens in destination countries who are interested in bringing a foreign partner to their country of residence. More indirectly, the study also contributes to our understanding of whether a more restrictive policy on partner immigration is feasible, given the present cultural values surrounding partner choice and – related to these values – the existing (inter)national legislation protecting family life.

We propose that two major factors determine how international couples will respond to the income requirement, if they (initially) fail it.<sup>31</sup> The first factor pertains to the couple’s capital, particularly the sponsor’s capital. The costs of meeting the income requirement – costs in the sense of sense of time, resources spent, and alternatives given up – will increase as it becomes more difficult for a sponsor to increase his or her income through formal labour (a formal labour contract has to be demonstrated to meet the income requirement). The ability to increase income will largely depend on the sponsor’s *human* and *social* capital.<sup>32</sup> For instance, sponsors with access to employers in their social networks will be better situated to find a suitable job (social capital). Likewise, relatively highly educated sponsors will have an elevated chance of meeting the income requirement if they make an effort to do so, either by finding a well-paid job, or by consulting lawyers to explore alternative legal settlement options (human capital).

The second factor is the degree to which sponsors are willing to pay these costs. This willingness will depend on the extent to which the couple is committed to continue the relationship. This in turn will depend on the extent to which

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<sup>30</sup> Espenshade, T. (1994) “Does the threat of border apprehension deter undocumented US immigration?”, *Population and Development Review* 20 (4), pp. 871–892. Cornelius, W. and M. Rosenblum (2005) “Immigration and Politics”, *Annual Review of Political Science* 8, pp. 99–119.

<sup>31</sup> Note that these two factors are related to ‘opportunities’ (capital) and ‘desires’ (commitment), i.e. two factors that are generally thought to be important for understanding human behaviour (see for instance Hedström, P. (2005) *Dissecting the Social: On the Principles of Analytical Sociology*. Cambridge: Cambridge University Press. Hedström adds ‘beliefs’ to these two factors. This third factor is not central in our analyses, even if beliefs are undoubtedly important. There were, for instance, quite some misunderstandings among the respondents about the precise height of the income requirement and the way in it was calculated (before taxes, after taxes, with holiday bonuses, without holiday bonuses, et cetera). Some respondents thought that the requirement was higher than it actually was.

<sup>32</sup> Coleman, J. (1990), *Foundations of Social Theory*. Cambridge: The Belknap Press of Harvard University Press. Granovetter, M. (1973) “The Strength of Weak Ties”, *American Journal of Sociology*, 78 (6), pp. 1360–1380.

partners are fond of each other, but also to the extent that termination of the relationship will be economically, socially and personally costly.<sup>33</sup> For couples who have built up a stronger ‘stake’ in the relationship, separation will entail stronger repercussions in terms of emotional stability and personal reputation as a ‘trustworthy’ husband, fiancé or parent.<sup>34</sup>

## 4. Method and Data Sources

### 4.1. Quantitative Data Sources

The quantitative data was taken from the Immigration and Naturalization Service (IND) database, which provides information (nationality, age, sex) on all non-EU partners who received a residence permit because of family formation. The sponsor’s ethnic origin is not registered as part of the IND procedure, but was obtained indirectly, by linking the data on foreign partners to what is known as the ‘partner file’, the comprehensive database on married and unmarried couples by Statistics Netherlands. This was done because ethnicity was a relevant variable in the Dutch debate on partner immigration. We compared the magnitude and characteristics of partner immigration in the sixteen months *after* the increase of the income requirement in November 2004 with the figures for the sixteen months *before* that policy change. The period of sixteen months was chosen to exclude the effects of the introduction of the language and integration requirement in March 2006.

We supplement these primary quantitative data with data from Statistics Netherlands on developments in the ethnic backgrounds of all marrying ‘Turks’ and ‘Moroccans’ in the Netherlands.

### 4.2. Qualitative Data Sources

The *qualitative* data consist of in-depth interviews with fifty international couples from various ethnic backgrounds and countries of origin. We personally conducted about one third of the interviews. The rest was done by a team of hired interviewers – most were employed by a research company specialized in interviewing ethnic minorities – under the training and (indirect) supervision of the authors. The partners were, as a rule, interviewed separately. All interviews were conducted in the native language of the respondents. The couples were: ‘Turkish’– Turkish (18),

<sup>33</sup> Stanley, S. and H. Markman (1992), “Assessing Commitments in Personal Relationships”, *Journal of Marriage and Family* 54, pp. 595–608.

<sup>34</sup> Becker, H. (1960), “Notes on the Concept of Commitment”, *American Journal of Sociology* 66 (1), pp. 32–40.

‘Moroccan’ – Moroccan (12), ‘Dutch’ – Thai (8), ‘Dutch’ – South American (6), ‘Dutch’ – Turkish / Moroccan (4), and other mixed couples (2).<sup>35</sup>

The respondents were selected by means of a quota sample from the IND database (N=514). The sample was designed to obtain 20 ‘Turkish’-Turkish, 20 ‘Moroccan’ – Moroccan, and 20 ‘Dutch’ – Thai / South American couples, and ensured variance in terms of age, sex, and year of application (2005 or later). These ethnic groups and countries of origin were sought after because they represent a large share of partner immigration to the Netherlands. Although we mostly conducted interviews with couples who eventually managed to meet the income requirement, we also approached couples whose applications had been rejected because of the income requirement (66 out of 514; 13%). This share is more or less representative: in the researched period, approximately 15% of all applications for ‘family formation’ were rejected because of the income requirement. All selected couples received an invitation for a face-to-face interview by means of a letter in Dutch and the native language of the foreign partner. Anonymity was ensured. Couples who showed interest were asked a few questions over the phone in order to select cases of family formation (instead of reunification), where migration plans or income positions had been changed in response to the income requirement.

Almost all couples interviewed had eventually managed to obtain a residence permit: only one couple responded where the foreign partner had not obtained a residence permit (yet). This selective response was unfortunate. Nonetheless, we did collect some *indirect* observations on couples who had not been selected from the database, had not responded, or who have never submitted an application for family formation (because applications are costly it could be expected that not all couples who fail the income requirement are documented in the IND database). This was done by interviewing all responding couples about their personal response to the income requirement *and* about eventual couples in their immediate social networks who have also been affected by the income requirement.

Although our analysis is based on qualitative *and* quantitative data, our argument is chiefly of a qualitative nature: its primary objective is to provide analytical insight into the main responses to, and, given these responses, the outcomes of a relatively restrictive income requirement for partner immigration. The theoretical concepts mentioned in the section on ‘theoretical starting points’ were not operationalised and measured quantitatively, but rather functioned as sensitising concepts, i.e., loosely defined concepts that offer ways of seeing, organising, and understanding the empirical data.<sup>36</sup> We make no claims about the precise extent to which certain responses which are described in the next section, occur in the population at large.

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<sup>35</sup> Most sponsors had the Dutch nationality.

<sup>36</sup> Blumer, H. (1954), “What is Wrong with Social Theory?”, *American Sociological Review* 19 (1), pp. 3–10.

## 5. Four Responses to the Income Requirement

On the basis of the empirical evidence gathered, we propose that international couples (and potential international couples) are responding to the income requirement in four ideal-typical ways. *Persistence* refers to couples who eventually manage to realise their plans to settle in the Netherlands. On the other side of the continuum, in case of a *desistance*, the international couple fails to realise its plans to settle in the couple's preferred country (*in casu* the Netherlands). The couple falls apart or – especially in case of arranged marriages – is no longer really formed. The sponsor may then decide to orient himself/herself to the domestic (or EU) relationship market. There is a 'grey' area between these extremes. In these cases, settlement in the Netherlands does not occur (yet). In case of a *resettlement*, the international couple settles in a different country, usually the country of origin of the foreign partner or a different EU country (this response excludes the EU route, see Section 5). The couple has no direct plans to relocate to the Netherlands, but may do so in the future. In case of a *delay of partner choice*, potential sponsors delay their choice for a partner altogether, reasoning that when they are older they may well be richer and able to meet the income requirement 'naturally' without having to adjust the income in the short run.

In Diagram 1, the four responses are brought into relation with the two abstract factors mentioned in Section 3. We propose that desistance is most likely if both the capital and commitment are relatively scarce. Persistence is the most likely if both the capital and commitment are high. Resettlement may occur if commitment is high – the couple has a strong preference to stay together – but the capital in the Netherlands is relatively low. Delay of partner choice may occur if the capital is high, at least potentially, but the commitment is low, as no relationship has yet been formed.

Diagram 1. Patterns of Partner Immigration in the Context of an Income Requirement

		Commitment	
		Low	High
Capital	Low	Desistance	Resettlement
	High	Delay of partner choice	Persistence

The relationships depicted in the diagram should be taken as a reverse engineered hypothesis: a likely explanation that is inferred inductively from the empirical data.<sup>37</sup> Furthermore, it should be noted that the diagram's primary purpose is analytical. In reality, the categories are likely to be less clear-cut. For instance, there may be cases of desistance where the capital is low, while the commitment is high. Below, we present the empirical evidence for the occurrence of the four responses mentioned.

### 5.1. *Persistence*

Persistence entails all responses that result in the foreign partner immigrating to the Netherlands. Here it is useful to make a distinction between (1) couples who adapt their official income position and remain, so to speak, within the regular Dutch system for partner immigration, (2) couples that obtain a Dutch residence permit in other ways, and (3) couples where the foreign partner settles without state permission.

Legal partner immigration decreased substantially after the increase of the income requirement (see hereafter on 'desistance'). The interviews indicate that if part of the sponsors had not managed to improve their income position, the reduction would even have been stronger. Various strategies to raise income were found: successfully negotiating a higher salary with the employer (either real or on paper), switching to a better-paid job, working more hours, and substituting education for work. Besides these 'active' strategies, some sponsors adapted to the income measure 'passively': they felt pressured to stay in a stable and relatively well-paid job that they actually wanted to quit. The following interview fragments show three typical instances of persistence that remain within the regular Dutch system for partner immigration. In order to protect the respondents' privacy the names are fictitious, and dates that could reveal the couples may have been changed slightly (for example 'between 2004 and 2007' instead of 'between 2005 and 2008')

#### 5.1.1. *Case 1. Aisha and Abdelwafi*

Aisha (a second-generation immigrant of Moroccan origin with the Dutch nationality) fell in love with Abdelwafi when she went on holiday to Spain after she had graduated from college. Abdelwafi, an illegal immigrant at the time, served her in a restaurant where he was a waiter. Half a year later they got married in Morocco. In the following winter, Abdelwafi applied for a residence permit, and in the spring he was able to immigrate legally to the Netherlands, where he soon found work as a production worker. Aisha explained that she initially wanted

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<sup>37</sup> See Glaser B, Strauss A. (1967) *Discovery of Grounded Theory. Strategies for Qualitative Research*. Aldine Publishing Company, Chicago.

to work as a teacher after her graduation, but that she felt forced to delay that wish because of her wedding in the context of the Dutch income requirement. ‘There was no chance of quietly looking for a suitable job.’ Aisha was pessimistic about her chances of finding teaching work quickly and receiving a stable labour contact straight away (as was mentioned, as stable income is part of the income requirement.) For a number of years, Aisha had been working in a grocery store as a sideline beside her studies. Because of the income requirement she agreed to work there for four days a week (the maximum number of days possible there), and took a weekend job at a builder’s merchant. Eventually, almost two years later, when Abdelwafi’s residence permit had been extended, she found work as a teacher. Aisha turned out to be negative about the period she had to meet the income requirement.

Nobody wants to work at a builder’s merchant after college. And it also was a very stressful period. I missed Abdelwafi a lot and my parents did not allow me to have a place of my own until Abdelwafi would be with me.

### 5.1.2. *Case 2. Sander and Somsri*

Sander (‘Dutchman’) was in his mid thirties when he applied for a residence permit for his girlfriend Somsri, who was approaching thirty at the time. They had met in a Thai seaside town in 2006. After having stayed in touch via the phone and internet for a while, Sander returned to Thailand for a month, in order to find out whether the relationship could ‘work out’: “I had been in Thailand before and knew how it worked with gold uncles. But via friends I had also heard about a Dutch-Thai couple who are doing very well”. In 2007 Somsri came to the Netherlands twice for a total of six months on two tourist visas. The application for a residence permit was submitted after her first visit. Sander has attended various colleges, but has not completed any higher education. In 2001 he found a job in a nursing home, which offered him the opportunity to follow an internal education. In the period that the relationship with Somsri developed, Sander worked there for 32 hours on a permanent contract: “I was free on Wednesdays, and had time for my hobbies. I always called this my mini-weekend, but my income was just a little bit too low with that higher income requirement”. Sander considered taking an additional job in a night store, but then, coincidentally, the nursing house inquired about his willingness to work full-time (in the Dutch health care sector: 36 hours). He accepted the offer because of the income requirement, but also because he wanted to earn more, since his expenses increased as a result of his international relationship; Sander paid for the tickets and Somsri had stopped working because of her visits to the Netherlands. Sander is positive about working longer hours; he enjoys the work and hopes to stay there for a while. “The only pitiful thing perhaps is that I’ve lost my mini-weekend, but now I have it every other week’ (given the workweek of 36 hours).

### 5.1.3. Case 3. Ali and Hayat

Ali (a first-generation immigrant with Turkish nationality) was in his mid twenties and father of a one year old son, when he applied for a residence permit for his wife in 2005. He worked in the hotel and catering industry on temporary contracts. The intention to form a family in the Netherlands with Hayat, a full cousin (*hala kızı*), was suggested by the parents in 2001, four years earlier. There has been an informal wedding in the family's village of origin in 2002 and a formal Turkish wedding in 2003. After the informal wedding the couple has waited for two years before applying for a residence permit, in order to meet the age requirement. The application was refuted because Ali's monthly income was considered too low – €20 after taxes according to Ali. His employer, a Turkish restaurant owner, eventually agreed to increase Ali's income by €100 a month, provided that Ali pay the 'higher' income back to him, and pay a one-time fee of €500 for 'costs made'. Ali found income fraud the best solution, for he did not want to delay Hayat's immigration any longer, as they had already waited for two years because of the age requirement. His family in law accused him of not being able to bring their daughter to the Netherlands and pointed out that Hayat was already living in with family for over three years, leading to gossip in the village, which impaired the family honour; after the wedding, a married woman is supposed to move in with her husband. The family and relational problems worsened when Ali and Hayat had a son in 2003, i.e., a year before the income fraud in 2004. Eventually, Ali almost began to resent his marriage: "We had fights over the phone almost every time we called". Ali submits that the income fraud would not have been 'necessary' under the original income requirement, because he did earn the minimum wage.

### 5.1.4. Persistence Outside of the Regular Immigration Procedure

A second variant of persistence involves couples who obtain a Dutch residence permit by turning to a different admission procedure. Occasionally, our respondents mentioned cases where the foreign partner had come to the Netherlands on a student or work visa, but usually they referred to what has come to be called the 'Europe route', or – because of it often involves Belgium – the 'Belgium route'.

Under European law, EU citizens including Dutchmen (by birth or naturalisation) have the right to form a household with a non-EU partner in the EU if they live in an EU Member State other than their state of citizenship.<sup>38</sup> European law also grants EU citizens and their partners the right to free mobility within the EU.<sup>39</sup> These stipulations enable Dutch sponsors to settle temporarily in a

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<sup>38</sup> Directive 2004/38/EC (Article 8, paragraph 4) implies that sponsors are exempted from the income requirement if they are EU nationals and live in an EU country other than their own.

<sup>39</sup> According to the Dutch Court of Justice in *Eind*, C-291/05, an employee has the right to return to

different EU country, where they bring their partner under European law. Next, they migrate with their partner to the Netherlands. This route is perfectly legal, provided that the stay in the other EU Member State has been ‘genuine and effective’. It demands bureaucratic effort and time, but is a viable option for citizens unable or unwilling to meet the Dutch admission requirements. This is a case of ‘legal capital’, perhaps a variant of social capital, since the privilege arises from formalized group membership, i.e. citizenship. Additionally, it seems to require human capital in terms of legal knowledge, economic capital in terms of funds for legal advice, and social capital to arrange housing and work in the other EU state.

It can be estimated that between 2005 and 2008 perhaps 250 couples – especially ‘Dutch’ couples, and some second-generation ‘Turks’ and ‘Moroccans’ – have used the EU-route to circumvent Dutch national immigration rules.<sup>40</sup>

A third variant of persistence concerns couples where the foreign partner settles in the Netherlands without state authorisation. While several foreign partners were residing in the Netherlands illegally when meeting their ‘sponsor’, none of them had immigrated illegally because of the income requirement. Several respondents claimed to know such couples, but only one concrete example was given, perhaps due to a desire to protect these couples. This couple was approached but did not want to participate in the study. Dutch research confirms that partner immigration constitutes a modest but notable part of the illegal residence in the Netherlands.<sup>41</sup> Most responding couples, however, found illegal settlement too risky (because of apprehension, detention, and deportation risks), too unattractive economically (because unauthorized immigrant have limited work opportunities in the Netherlands), or problematic because of personal political opinions (‘I am against illegal residence in our society’). The concern for the risks associated with illegal residence is not completely unfounded. Since the 1990s, the Dutch government has developed various policies to reduce the life chances for unauthorized migrants in terms of working opportunities, and access to educa-

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the country of which (s)he is a national after having worked in a different EU country, even if (s)he did not effectively worked in that EU country.

<sup>40</sup> Schreijenberg, A., J. Klaver, J. Soethout, G. Lodder and M. Vleugel (2009), *Gemeenschapsrecht en gezinsmigratie. Het gebruik van het gemeenschapsrecht door gezinsmigranten uit derde landen*. [EU Law and Family Migration. The Use of EU Law by Family Migrants from Third Countries] Amsterdam: Regioplan. Approximately 1,000 foreign partners with a Dutch sponsor received a Dutch residence permit on the basis of EU law in the period January 2005–December 2008. Between 2005 and 2008 the annual number of such cases increased from less than 50 to more than 500. About a quarter of the 182 Dutch sponsors whose files were examined had lived elsewhere in the EU for less than a year before submitting an application for partner immigration to the Netherlands (1000\*0.25=250).

<sup>41</sup> Engbersen, G., M. van San and A. Leerkes (2006), “A Room with a View. Illegal Immigrants in the Legal Capital of the World”, *Ethnography* 7, pp. 209–242; Leerkes, A., G. Engbersen and M. van San (2007), “Shadow Places. Patterns of Spatial Concentration and Incorporation of Irregular Immigrants in the Netherlands”, *Urban Studies* 44 (8), pp. 1491–1516; Leerkes, A. (2009), *Illegal Residence and Public Safety in the Netherlands*, Amsterdam: Amsterdam University Press.



tion and health care.<sup>42</sup> Furthermore, there is evidence that the risk of immigration detention is now considerably higher than in the past.<sup>43</sup>

### 5.2. Desistance

Table 1 presents an overview of all couples who received a Dutch residence permit because of family formation in the 32 months studied. In the 16 months before the income requirement was raised, 14 359 foreign partners received such a permit. In the 16 months after its implementation, this figure had fallen to 9 048. Thus, there were 5 331 (37%) fewer residence permits in the latter 16 months than would have been expected had the level of legal partner immigration remained stable.

Table 1. Number of Residence Permits for Non-EU Partners by Origin Group, Sex and Age (1 July 2003–1 February 2006)

	Ante (1st July 2003–31st October 2004)	Ex (1st November 2004 – 27nd February 2006)	Difference ex-ante	Reduction rate	Average reduction per month
Total, of whom:	14,359 (100%)	9,048 (100%)	5,311	-37%	332
Native Dutch	4,690 (33%)	3,506 (39%)	1,184	-25%	74
'Turks'	2,596 (18%)	1,161 (13%)	1,435	-55%	90
'Moroccans'	1,948 (14%)	916 (10%)	1,032	-53%	65
Other	3,796 (26%)	2,647 (29%)	1,149	-30%	72
non-Western immigrants					
Western immigrants	1,329 (9%)	818 (9%)	511	-38%	32
Men	9,755 (68%)	6,669 (74%)	3,086	-32%	193
Women	4,604 (32%)	2,379 (26%)	2,225	-48%	139
21–28 years	3,432 (24%)	1,735 (19%)	1,697	-49%	106
28 years and older	10,927 (76%)	7,313 (81%)	3,614	-33%	226

Source: WODC / INDIAC (2009), p. 35 and p. 179. Adapted by the authors.

<sup>42</sup> Van der Leun, J. (2003) *Looking for Loopholes: Processes of Incorporation of Illegal Immigrants in the Netherlands*. Amsterdam: Amsterdam University Press. Leerkes, *supra* note 41.

<sup>43</sup> Leerkes, A. and D. Broeders (2010), "A Question of Mixed Motives? Formal and Informal Functions of Administrative Immigration Detention", *British Journal of Criminology* 50 (5), pp. 830–850.

There are, of course, several factors besides the increased income requirement that may have caused a decrease. Three factors suggest themselves: (1) demographic developments in the number of inhabitants who have an elevated chance of forming a new household because they are of marriageable age, (2) the economic cycle, and (3) processes of immigrant integration. We have explored these alternative explanations, but conclude that the factors mentioned are unlikely to have caused such substantial shifts in partner immigration in such a short period of time (see the note for more details).<sup>44</sup>

An important reason for attributing the decrease to the income requirement is that the number of residence permits fell most notably in relatively poor groups. As a rule, the number of legally immigrating partners of non-Western, female and young (21–28 years of age) sponsors diminished much more than did the number of residence permits involving ‘Dutch’, male and older sponsors. Whereas the reduction for ‘Dutch’ and the Western immigrants was 25% and 38%, respectively, it was 55% for ‘Turks’ and 53% for ‘Moroccans’ (Table 1). The reduction was also higher among females (48%) and younger sponsors (49%) than among males (32%) and older sponsors (33%).

It should be remarked that the decrease may not exclusively indicate desistance, as resettlement and delay of partner choice may also have contributed to it. Yet, data from Statistics Netherlands provides additional evidence for desistance (Fig. 1).<sup>45</sup> It turns out that the number of international marriages among ‘Turks’ and ‘Moroccans’ has fallen in recent years, while the number of ‘domestic’ marriages *increased*, especially within the ethnic group. For example, whereas in 2003 approximately 50% of the marrying ‘Turks’ married a Turk from Turkey, by 2006 this share had dropped to about 30%, and by 2007 to about 20%. This substitution

<sup>44</sup> See WODC / Indiac, *supra* note 2. A rough proxy for the number of people who have the age to marry is the number of people between 20 and 50 years of age. Between 2003 and 2006 the number of ‘Dutch’ in this age category indeed decreased with a few percent points, but it increased notably for ‘Turks’ (11%), ‘Moroccans’ (3%), and the category ‘other non-Western countries’. Furthermore, the economic cycle may, at most, explain part of the decrease in the number of residence permits *before* the income requirement was raised in 2004. Between 2002 and 2004 the number of people on welfare increased due to the post 9–11 fall of the economy. After 2004, however, the economy recovered. Moreover, it is unlikely that a reduction of marriage migration of more than 50% in 32 months time could merely be the result of processes of migrant integration, which tend to be gradual. Admittedly, partner immigration among ‘Turks’ and ‘Moroccans’ was already decreasing in the period before the new income requirement became effective (see Figure 1). This decrease may point at increased integration, even if part of it was probably related to the economic cycle and previous restrictive measures: the income requirement for married couples was raised in 2001, but for Dutch sponsors and foreigners admitted before 2001 there was a transitional period of three years. Furthermore, partner immigration in the category ‘other non-Western countries’ also fell by 30% (see Table 1). In this category, which includes ‘Surinamese’ and several smaller and relatively new immigrant groups in The Netherlands, partner immigration was only decreasing moderately before 2004. Finally, partner immigration also decreased among the ‘Dutch’.

<sup>45</sup> See also Van Huis, M. (2008) ‘Partnerkeuze van allochtonen’ [Partner Choice of First-Generation and Second-Generation Immigrants], *Demos, bulletin over bevolking en samenleving* 24(1), pp. 1–4.

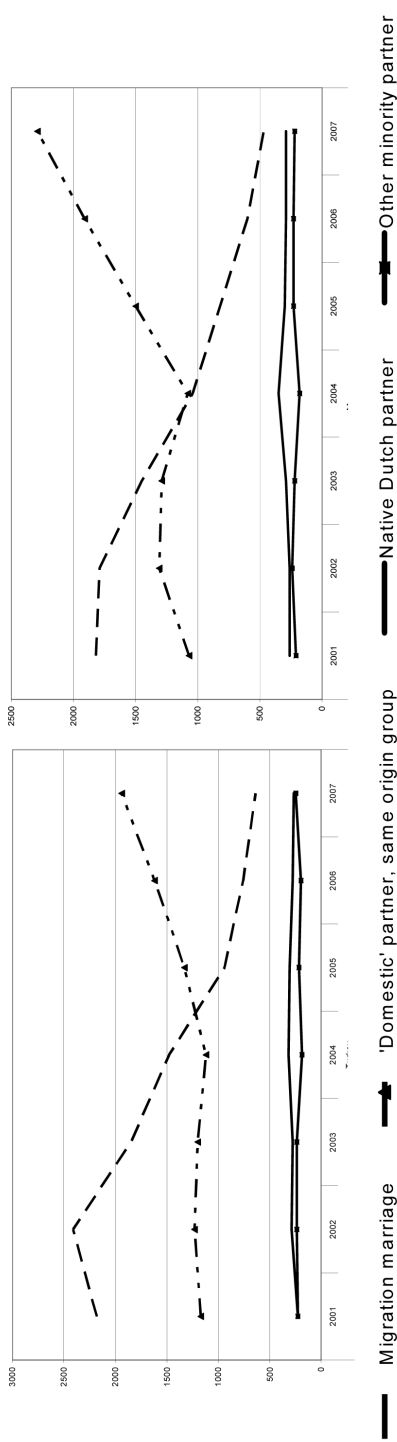


Fig. 1. Marrying residents with immigrant status (first-generation and second-generation combined) by origin group of the partner; developments for 'Turks' and 'Moroccans' (2001–2007).

Note: Adapted from Statistics Netherlands. The data in Fig. 1 only pertain to *marrying* persons with an immigrant background. Table 1 includes married and unmarried couples and provides a more complete image of partner immigration involving non-EU partners.

effect is taking place since 2005 in particular, i.e. after the increase of the income requirement.

The interviews provide qualitative evidence for desistance. As was mentioned, the evidence is indirect. Various respondents reported that international couples in their direct social networks had fallen apart under the influence of the income requirement (sometimes in combination with other admission requirements). The following fragments illustrate this.

#### 5.2.1. *Case 4. Asena Relates the Story of Azra*

Asena (a second-generation immigrant of Turkish origin with Dutch nationality) was interviewed because she had interrupted her higher education to work for one of her father's acquaintances, where she could get a relatively high wage (a 'friend's service'). She tells the following story about a colleague from a former student job at a bakery. "Azra was nineteen and also wanted to marry a Turk. Her family had arranged the marriage, but she wanted it too. They married in Turkey when she was twenty. He was a few years older. Azra knew that he could not come to the Netherlands until she was twenty-one [because of the Dutch age requirement]. She then spent a year trying to meet the income requirement. Beside her work in the bakery, she followed a course in pedicure and tried to find better-paid work. However, she does not really have stamina so she did not succeed. During that time, the government also came up with that language test [the civic integration examination in the country of origin of the foreign partner]. This caused extra stress and problems. Azra and her husband grew apart and could not persist. Eventually they divorced.

#### 5.2.2. *Case 5. Nico Relates the Story of an Employee*

Nico is a divorced 'Dutchman' of about fifty years who married Victoria, a divorced Venezuelan mother of a daughter and about thirty-five. He tells the following story about an employee.

As a contractor, I often work with Kurdish Iraqi. I know this guy, a good guy, but he is a bit of a peasant. He wanted to marry, lives here about ten years, went to Iraq for a month. You see with Kurds, family marries family, so his mom and dad said 'Listen, we have a girl from the village'. So he was a decent son and went to Iraq. But as an 'opruimer' [somebody who removes rubbish during construction work] he could not reach that requirement. And his poor Dutch was also a real impediment for getting a better job. Eventually, I managed to find him a job as a cleaner, which enabled him to qualify. But then they increased that requirement [in 2004] and as a cleaner he isn't going to succeed. [Interviewer: 'Does he still have contact with that girl?'] No, she broke the engagement when she realised that she couldn't come. And he is still alone, you know. [I: 'For how long did the engagement last?'] I think she waited for almost one and a half years and he didn't come, he didn't ask. He now wants to save some money and return to Iraq. He feels he can't marry here.

#### 5.2.3. *Case 6. Toon Relates the Story of Two Cousins*

Toon is a young 'Dutch' economist and consultant. Three years ago – he was still studying at the time – he began a relationship with a Thai girl. The couple had

been formed during Toon's visit to a 'Dutch' friend who has a language school in Thailand, where he lives with his Thai wife. (Toon was interviewed because, as a student, he did not meet the income requirement, and when he had just graduated, he could not prove a stable income because he did not immediately obtain a year contract. Eventually, it took him about two years to bring his wife and son to the Netherlands, who was six months old at the time.) He related the following story about two cousins.

These cousins were inspired by me and this friend in Bangkok, so to speak [laughs a bit]. They also went to Thailand together [with a view to getting involved in a relationship] and indeed found a girlfriend. They both do temp agency work and I don't think they make a lot of money. In any event, they decided to settle in Belgium, just over the border. They kept working in the Netherlands, for a temp agency. The relationship of one guy eventually went wrong. There was a lot of stress in the relationship. The guy did temp work he did not want to do and both couples did not know anybody in that Belgium village. It was even more terrible because he and his ex-girlfriend got a baby there. Now he lives here again, while she is still there in Belgium. I don't know whether she will return to Thailand, to be honest. As a single mother she will lose a lot of face there. The other cousin is still trying to get his girlfriend to the Netherlands.

### 5.3. *Resettlement*

In case of resettlement, the international couple stays together, but compromises with respect to the preferred country of household formation. One couple eventually decided to settle in Spain – with no direct intention to return to the Netherlands – because the man, a 'Dutch' cook, had difficulty proving sufficient (formal) income in the Netherlands and because the foreign partner, of Latin-American origin, spoke Spanish. Two other respondents mentioned international couples where the sponsor settled in the foreign partner's country of origin. In one case, a 'Turkish' girl had decided, much against the wish of her family, to marry a Turk she had met during a holiday in Turkey. She eventually quit her studies to work in an effort to meet the income requirement, but the immigration authorities accused her of income fraud. Her husband, on his part, had trouble passing the integration exam in Turkey. Eventually, the girl went to Turkey, where she became a mother. The couple's future is uncertain because the girl does not want to live in Turkey, whereas her husband no longer wants to migrate to the Netherlands. A similar case involving a 'Dutch' girl is described below.

#### 5.3.1. *Case 7. Brigit and Erkan*

Brigit was 17 years old when she and her mother visited a Turkish coastal town to enjoy a holiday. Her future husband, in his twenties, worked in the hotel. Brigit and Erkan talked with each other several times in the hotel and coincidentally met at the airport when Brigit returned to the Netherlands, while Erkan was picking up hotel guests. She took his picture, asked his e-mail address, and stayed in contact. The couple eventually made plans to marry and live in the Netherlands. They married when she was 19 and had completed her vocational education.

Because Brigit still did not meet the age and income requirements at the time, she decided to settle in Turkey. “We have considered a marriage [of convenience] between Erkan and my mother so he could come [to the Netherlands], but eventually my mother didn’t want to do it and neither did I, to be honest.” We could interview Brigit because she was in the Netherlands to deliver a baby. She told us that she had doubts about returning to Turkey because there is hardly any child-care available for her there. She is now trying to find a way to meet the income requirement, which, she fears, is difficult for her as a young mother with little work experience in the Netherlands. For this reason, one of her family members, who is about to start a business in the Netherlands, is considering to employ her ‘on paper’ and offer her a ‘sufficient income’.

#### 5.4. *Delay of Partner Choice*

Part of the decline in admitted non-EU partners may be due to a policy-induced, or policy-amplified, postponement of marriage.<sup>46</sup> Note that in Figure 1 the *total* number of marrying ‘Turks’ and ‘Moroccans’ has diminished somewhat, in spite of the substitution from the international marriage to the domestic marriage (in these groups unmarried cohabitation is still uncommon). This decrease is quite remarkable in the light of the increasing number of ‘Turks’ and ‘Moroccans’ who are reaching the age of marriage. For this demographic reason, Statistics Netherlands was initially forecasting a substantial *increase* in the number of foreign partners involving ‘Turks’ and ‘Moroccans’, assuming that in these groups the probability of a migration marriage would remain stable.<sup>47</sup>

Postponement of partner choice may lead to partner immigration in the future when potential sponsors are older, and a larger proportion will meet the income requirement ‘naturally’, i.e. without adjusting the income in the short run. For ‘Turkish’ and ‘Moroccan’ second-generation women, in particular, the non-EU marriage market is likely to remain an option because they tend to outperform their male counterparts in the Dutch educational system. One of the reasons for the initial popularity of the migration marriage was that it enabled ‘Turkish’ and ‘Moroccan’ women to find a relatively highly educated partner in their countries of origin, while it gave men the opportunity to find a relatively ‘traditional’ partner in these countries.<sup>48</sup> These strains on the domestic relationship market have not been solved. As can be seen in Fig. 1, it is still relatively uncommon for Muslim men and, even more so, for Muslim women to have a ‘Dutch’ partner.

<sup>46</sup> On the postponement of partner choice under the influence of immigration rules also see Nielsen, H., N. Smith and A. Celikaksoy (2007), *The Effect of Marriage on Education of Immigrants: Evidence from a policy reform restricting spouse support*. Bonn: IZA. Discussion Paper Series no. 2899.

<sup>47</sup> Aalbers, M. (2005) *Prognose van gezinsvormende migratie van Turken en Marokkanen* [Prognosis of partner immigration among Turks and Moroccans]. Voorburg: Statistics Netherlands.

<sup>48</sup> Hooghiemstra, *supra* note 6.

## 6. Separation, Consequences for Well-being, and Legitimacy

The cases described in the previous section show that for some couples, persistence was not a big deal: a man working 32 hours a week, simply agreed to a workweek of 36 hours with the same employer. In other instances, persistence required much more effort on the part of the sponsor, and patience on the part of the couple as a whole. All in all, the respondents were separated from their partners (and sometimes their children) for fifteen months on average under the influence of the immigration procedure.<sup>49</sup> Separation was due to the level of the income requirement, but also because of the stipulation that the income must be stable. As a rule, it took persisting couples at least a few months to bring the income in line with the requirement. In many instances, it took them over a year. Other aspects of the immigration procedure, such as the integration exam in the country of origin, and the time it takes the Immigration and Naturalization Service to judge the application (usually up to three months), also contributed to delay of settlement. If one or both partners were under 21 when the migration plans arose, the waiting period was, on average, thirty months. The prolonged separation among the latter couples was associated with the age requirement, but also, more indirectly, with the income requirement; all interviewed young couples, except one, initially earned too little.

Some of the respondents told us that the higher income eventually benefited them, as it reduced their financial worries ('we just bought new furniture'). This positive evaluation was especially common among male sponsors who aspired to the role of breadwinner, and did not want to continue their studies. Other couples, however, experienced the higher income requirement as an impermissible state intervention in what they regarded as their private affairs (choice of a partner, choice of a labour market career, choice of a place of residence). Females and younger men in particular, felt forced to adapt their life course in undesired ways by working more hours than desired, forsaking (part-time) study opportunities, and working in an 'undesirable' job. The young sponsors sometimes felt that they had to sacrifice long-term gain through education for an income increase in the short run. Most responding couples reported personal and relational 'stress' in connection with the admission procedure, and it is probable that desisting couples had similar experiences. There was direct and more indirect stress. Direct stress arose because of the efforts needed to increase economic performance (working longer hours, switching to a more demanding job). Indirect stress occurred, for example, when it took longer to meet the rules and the foreign partner – and sometimes the foreign family – began to question the sponsor's commitment in the relationship. This sometimes led to quarrels that were difficult to solve at a distance. Some respondents even advanced that the immigration

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<sup>49</sup> On 'forced' separation among international couples in the United States see Constable, *supra* note 3.

procedure led to serious health problems. One couple, for example, contended that it had led to hospitalization of the Venezuelan foreign partner in a psychiatric hospital, while another couple reported that the sponsor – an older ‘Turkish’ woman – had developed serious back problems due to working longer hours as a cleaner.

We found that an income requirement of 120% has limited legitimacy among the couples. A large majority of the sponsors (33 of 50, 66%) was negative about it, while a minority was positive (9) or ambivalent (8). Although we got the impression that most couples endorsed the principle that newcomers should not become a public charge, most of them found a requirement of 120% too high because (our interpretation) (1) ‘it discriminates against people with lower educational levels, women, youngsters and non-Western ethnic minorities (the requirement only pertains to foreign partners from non-EU countries), (2) ‘it does not respect individual choices concerning the family’, and (3) ‘it contributes to psychological problems among international couples’. The main arguments in favour of the higher income requirement were (1) ‘a requirement of 100% does not suffice to support a family’, (2) ‘the higher requirement reduces immigration among poorer, non-Western groups’ and (3) ‘the higher requirement reduces marriages of convenience since fewer people qualify automatically’.

We also asked couples to comment on the age requirement, which was raised simultaneously with the income requirement. Interestingly, most responding couples, including youngsters, were positive or ambivalent about the increase from 18 to 21 years (27 sponsors were positive, 8 ambivalent, 10 negative, the others had no opinion or did not answer). These findings imply that even international couples do not favour an unconditional right to partner immigration; rather, the *communis opinio* appeared to be that requirements for partner immigration are legitimate, provided that all citizens (denizens probably less so) can be expected to meet these stipulations if they make a reasonable effort. Everybody can be expected to work full-time and earn the minimum wage, and most people will reach the age of 21, but not everybody is assumed to be capable of earning 120%. Additionally, it could be speculated that age requirements are more easily seen as *protecting* the ideal of a free partner choice for all citizens, rather than putting pressure on it, as they are assumed to discourage forced marriages.

## 7. Conclusions and Discussion

This study examined the effects of a relatively restrictive income requirement for partner immigration and identified four main responses: persistence, resettlement, delay of partner choice, and desistance. We proposed that these are connected to two factors: capital and commitment. The findings indicate that, potentially, national governments have substantial power to limit partner immi-



gration. On an average, ‘family formation’ in the Netherlands fell by 37% after the income requirement was increased. The decrease was concentrated among poorer groups (non-Western immigrants, youngsters, women). There is suggestive evidence that this outcome was reached at the expense of the well-being of a segment of the international couples, especially when the sponsor had difficulty meeting the requirement and/or did not aspire to a higher income in the short run. It also selectively limited the partner choice options among citizens and denizens with a relative lack of human and social capital, although this was, to some extent, what was intended.

Legal partner immigration was discouraged by increasing the ‘costs’ (money, but also time and resources) of obtaining a residence permit. International couples had to cope with increased uncertainty about the outcome of immigration procedure, and increasingly had to put up with ‘forced’ physical separation. Sponsors in particular, were pressured to make additional costs. They had to employ, or develop, human or social capital in order to obtain additional economic capital. Physical separation, uncertainty about the outcome of the immigration procedure, and efforts to improve economic performance regularly caused, or aggravated, relational and personal problems, which, according to the respondents, involved serious health issues in some cases. Thus, in a real sense, legal partner migration became more hazardous (albeit, of course, less dramatically than in the case of illegal border crossing).

To some extent, the increase in the income requirement contributed to alternative ways of settlement, both legal and illegal. Yet it appears unlikely that these alternatives did completely offset the decrease in legal immigration via the regular Dutch channel for family formation. For these alternatives are also costly: they either require much effort (EU route), or tend to be considered too risky or economically too unattractive. Sometimes they were also seen as morally objectionable (unauthorized settlement).

This study illustrates the dilemma’s surrounding the regulation of partner migration. The increased desire among EU electorates to selectively limit partner immigration tends to contradict (other) strongly held values in liberal democracies.<sup>50</sup> We have described the couples’ objections against the increase in the income requirement, and mentioned the European Court of Justice’s disapproval of the increase. The latter decision shows that the couples’ concerns do not exist in a social vacuum; similar values underlie the contemporary moral and legal framework surrounding family life and partner choice.<sup>51</sup> There is a strong, essentially ‘romantic’ ideal that every adult citizen (denizens probably less so), regardless of social status, has a right to choose a partner and form a ‘nuclear family’,

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<sup>50</sup>) Joppke, *supra* note 5.

<sup>51</sup>) See also chapter 9 in Walzer, M. (1983), *Spheres of Justice. A Defence of Pluralism and Equality*. Oxford: Blackwell.

regardless of the partner's social status, and therefore, in principle, regardless of the partner's nationality.<sup>52</sup> Former regulations in the sphere of partner choice – such as the prohibition on interracial marriages – are now considered overly paternalistic or outright immoral. In this connection it is relevant to point out that in March 2008, a major Dutch television channel started a weekly program called *Borderless in Love*, which brings human interest documentaries on Dutch (usually 'Dutch') citizens who decide to *emigrate* because of a mixed relationship with a foreign partner. (In the program it was not mentioned that emigration decisions were sometimes due to legal considerations, even if the weblogs of the participants sometimes claimed that they were). This is not to say that all international relationships are 'romantic'. Among the stated reasons for tightening the admission requirements were the suspicion that partner immigration is being used to circumvent restrictive labour immigration policies, and the concern about forced marriages. Rather, the possibilities to selectively restrict partner immigration are bound to be limited in a cultural and legal context where the official discourse on love and marriage is dominated by 'romantic' ideals. Future research could answer the question of why there were no *internal* legal constraints in the Netherlands preventing the increase in the income requirement to 120%; part of the explanation probably lies in the fact that the Dutch Senate – which usually checks whether new policies are consistent with the constitution and international treaties – never voted on the increase to 120%, as the measure was taken in the form of an Order in Council ('AmvB') and did not require new legislation. A related topic for future research is to examine whether the Netherlands will be successful in convincing other EU countries to tighten the EU directive on family reunification, which is now being proposed by some parliamentarians.<sup>53</sup>

It remains to be seen whether similar conclusions will obtain for other newly introduced policy interventions in EU Member States, such as the requirement that the foreign partner passes an integration exam before being admitted. Although these exams have broader societal and political support – in the Netherlands only 18 of 150 parliamentarians opposed it –, several cases pertaining to them may end up in European courts.<sup>54</sup> Similar dilemmas exist, as the civic inte-

<sup>52</sup> Shorter, E. (1975), *The Making of the Modern Family*. New York: Basic Books. Collins, R. (1988) *Sociology of Marriage and the Family: Gender, Love and Property*. Chicago: Nelson-Hall.

<sup>53</sup> Schain, M. (2009), "The State Strikes Back: Immigration Policy in the European Union", *The European Journal of International Law* 20 (1), pp. 93–109.

<sup>54</sup> For example, on August 21 2007 the *Inspraak Orgaan Turken* (an advocacy organization for Turks in the Netherlands) requested the European Commission to start an infringement procedure against the Dutch government. The organization claims that the Dutch rule that exempts nationals from certain industrialized countries (such as the United States of America and Japan) from the civic integration examination abroad is discriminatory, and contradicts the prohibition to discrimination according to nationality (article 12 TEC). It could also be argued that the Chakroun case implies that a failure to pass the civic integration examination abroad is, in itself, not a sufficient ground for rejecting a residence permit; applications concerning such 'problematic' foreign partners will have to be assessed individually.

gration requirement too appears to have a, albeit limited, restrictive effect.<sup>55</sup> Two groups in particular turn out to have lower chances of passing the exam: migrants with little formal education (especially when illiterate) and migrants with native tongues that are linguistically distant from the official language in the destination country. These dilemmas will probably become more pressing when the integration exams abroad will be made more difficult in order to achieve a more substantial restrictive effect. The Dutch government announced that the exam will be strengthened in April 2011.

As this study examined *partner migration* in an *EU Member State*, a few closing comments are in order on the extent to which the findings can be generalized to other countries, and other migration types. Firstly, the moderating influence of international law will be smaller outside of the EU, especially in non-Western countries. If a country wants to be a member of the European Union, it has to comply with EU directives. International declarations and treaties such as the Universal Declaration of Human Rights and the European Convention on Human Rights (ECHR) exert less pressure on national governments. This is true even if these declarations and treaties also express the value of a free partner choice, and even if the latter sometimes lead to national policy adjustments too (it should also be remarked that the ECHR does not define free partner choice as an *unconditional* right, see note).<sup>56</sup> Secondly, it is worth mentioning that international law protects labour migrants much less than family migrants and asylum seekers. As it stands, in Fortress Europe, ‘love’ migrants are still relatively privileged.

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<sup>55</sup> Significant (2008) *Kortetermijnevaluatie Wet Inburgering Buitenland. Eindrapportage*. [Short term evaluation Law Integration Abroad] Barneveld: Significant.

<sup>56</sup> Article 8 of the European Convention on Human Rights states that public authorities may interfere with the right to free partner choice “in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”