

LEGAL UPDATE

Minister publishes long-awaited letter on international students in higher education

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In recent months, the debate on the intake of international students in Dutch higher education has received a lot of attention. In late December, for instance, Education Minister Dijkgraaf made an [appeal](#) to universities and colleges to stop actively recruiting foreign students. It was indicated that this appeal would be valid until the minister would come up with new measures on internationalisation, included in the 'February letter'. Due to repeated delays, the February letter became an 'April letter' [published](#) on Friday 21 April last. In this Legal Update, we discuss this letter.

Background to the debate on the influx of international students

Background to the debate on the influx of international students, is that the influx of the number of students from abroad has increased significantly in recent years. The Netherlands is a popular country for international students. This is due to the high quality and affordability of higher education in the Netherlands and the offer of English-language programmes. The influx of foreign students is made possible from the free movement of people within the EU, which allows EU citizens to study in the Netherlands without an additional visa or permit. This means that Dutch higher educational institutions are unable to limit the number of EU students, increasing pressure on capacity and the housing market.

There are also few control options for study migration from outside the EU. Under the EU Study Directives, residence permits must also be granted to non-EU/EEA students if they are admitted to higher education. Furthermore, under Article 1 of the Dutch Constitution, Dutch and foreign students must be treated equally and are therefore not allowed to set different admission rules. The fact that these rules are not always workable (anymore) for educational institutions is demonstrated by the fact that the University of Amsterdam [announced](#) last September that it would admit fewer foreign students. It did so as an experiment, as this is not legally allowed at the moment.

The letter

Although internationalisation in higher education brings all kinds of benefits, according to the minister, in several places the balance has now been lost and the absorptive capacity has been reached. What is needed is not only an "accelerator" and a "brake" but, above all, a "steering wheel". The letter is a bit circumlocutory in that the minister first formulates six principles and then five "elements" for an effective package of measures that eventually culminate in some concrete measures. There is the necessary overlap, so we limit this review to the main concrete measures.

Central direction on internationalisation

The minister indicates that the current system, in which institutions decide who, how and how much to recruit for their programmes, has led to an insufficiently manageable influx of students. A kind of 'tragedy of the commons' has developed where the actions of individual institutions do not add up to a workable whole. The minister is exploring the possibility of giving a central governing body the role of ensuring effective implementation of measures around internationalisation in higher education. The minister will come back to this in more detail.

Legal frameworks

The minister is withdrawing the Language and Accessibility Bill (Wetsvoorstel Taal en Toegankelijkheid) because he wants more robust instruments. These will come in a new law that should take effect as early as 1 September 2024 (academic year 2024-2025). The minister wants to anticipate this with administrative agreements and a further explanation of the existing law.

- a. **A capacity fixus for (foreign-language) tracks within a (Dutch-language) programme.** A capacity fixus is a numerus fixus (a cap on the number of students admitted) if the available educational capacity (in terms of staff, facilities and other means) is insufficient. The minister wants to be able to maximise the number of places in an English-language track, so that sufficient capacity then remains for the Dutch-language part of a programme. This requires an amendment to the law. Educational institutions must inform prospective students of such a change in a timely matter. Specifically, this means that with the envisaged law coming into effect in the year 2024, it will be possible to use the instrument for the academic year 2025-2026 (provided institutions are informed sufficiently in time).
- b. **Limited admission of non-EEA students.** The minister also wants to use the capacity fixus in a more targeted way by distinguishing between EEA and non-EEA students. This involves empowering institutions to set a maximum number of places for non-EEA students within the (regular) capacity fixus. Furthermore, the minister wants to introduce an emergency capacity fixus for non-EEA students. This can be deployed in the event of an unexpected and large increase in the number of applications from non-EEA students, so that sufficient places remain for EEA students, including Dutch students.
- c. **Promote the Dutch expression skills of all students in all programmes and introduce a test of foreign-language education.** Under the current WHW (Higher Education and Research Act), the main rule is that teaching and exams must be conducted in Dutch (article 7.2 WHW). According to the minister, many exceptions have been made to this main rule in recent years. As far as the minister is concerned, Dutch as the language of instruction is and will remain the starting point and he also wants to promote the Dutch language in completely foreign-language programmes. This means that, in principle, attention will be paid to Dutch language skills in every study programme. This requires a legal anchoring, which will be further elaborated in the coming period. This bill will also include the 'test of foreign-language education', which will test whether having another language of instruction is of added value to the quality of education or society.
- d. **Clarification of current language requirements in the WHW.** The law currently provides room for institutions to provide education in a language other than Dutch if there is a need to do so (section 7.2 part c WHW), but on the other hand, an institution must focus on the promotion of expression skills in Dutch (section 1.3 paragraph 5 WHW). A further explanation of the grounds for exceptions and the obligation to promote the ability to express oneself in Dutch will be provided before 1 June 2023.

Administrative agreements

Equally before next summer 2023, the minister wants to make renewed agreements with educational institutions on managing the influx of international students. There are nine topics those agreements should cover, including the testing of Dutch expression skills and the way in which the preparatory year for international students can be discontinued. So with these administrative agreements, the minister also wants to anticipate legislation.

In addition, he wants higher requirements for being allowed to offer foreign-language programmes. For this, the accreditation framework needs to be adjusted. The minister is in talks with the NVAO (Accreditation Organisation of the Netherlands and Flanders) on this point.

What is the current position of educational institutions and students?

The letter speaks of urgency, for which the House of Representatives (Tweede Kamer) had also asked. The minister wants new legislation, but also wants to anticipate this with his own explanation of the provisions on language in the WHW, agreements with the field and frameworks for the NVAO.

The question, of course, is whether this will not put legal certainty under pressure. It is short notice for programmes and institutions but also for international students who are already far along with their plans to come to the Netherlands in the coming academic year. The minister wants to use the space given to him by the existing law, but also acknowledges himself that he cannot enforce standards that are not in the law.

The legislative agenda is ambitious, with a consultation round next summer 2023, a new law in September 2024, after which the most far-reaching measures could take effect in 2025. Also, the interpretation of the central governing body makes one curious: will this be a kind of '*Super-Behörde*' with coercive power or a collection of 'oilers' behind the scenes?

When there is more clarity on the new explanatory note, the field agreements and frameworks or the consultation document, we will of course notify you.

This is a Legal Update by our Education sector team.

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