

Rules and Regulations Pilot Scheme Incoming Mobility VET level 4

regarding the implementation of Article 9.6 of the Code of Conduct Pilot Scheme Incoming Mobility VET level 4

Section 1. Preliminary provisions

Article 1. Definitions

The definitions given in the Code of Conduct Pilot Scheme Incoming Mobility VET level 4 also apply to these Rules and Regulations.

Article 2. Language

1. The Dutch and English versions of the Code of Conduct are equally authentic.
2. All communications in relation to international participants with respect to the Code of Conduct Incoming Mobility VET level 4, the Register, the National Commission and the Rules and Regulations Incoming Mobility VET level 4, will be in the Dutch or English language.

Section 2. Register Administrator

Article 3. Application for inclusion in the Register

1. An educational institution may submit a request for inclusion in the Register by fully completing and signing the application form.
2. The application form for inclusion in the Register is to be signed by the competent authority of the educational institution, or by the person who is competent to fully represent the institution, as can be established from the Dutch Commercial Register.
3. The application form as well as the documents referred to therein will be submitted in the Dutch or English language.

Article 4. Application process

1. The Register Administrator will confirm receipt of the application within five working days.
2. In case the application is incomplete, the Register Administrator requests the missing information to be provided within a stipulated period.
3. In case the information is not provided within the period as referred to in the second paragraph, the application will be deemed to have been withdrawn.
4. The application will only be processed if and when it is complete.

Article 5. Assessment of the application

Regarding the implementation of Article 6.2 of the Code of Conduct, the Register Administrator uses the schedule below (in Dutch). The outcome of the weighting of the scores on the various components determines the decision on the application.

Kwaliteitsborging	Risico? (onvoldoende = 1)	Zwaarte	Totaal (risico * zwaarte)
Op bestuursniveau			
KA1 Kwaliteitszorg		6	
KA2 Kwaliteitscultuur		4	
KA3 Dialoog en verantwoording		1	
FB Financieel beheer		2	
Kwaliteit van bestuur a.d.h.v. verificatieonderzoeken 4JO	Risico? score 0 t/m 4 mogelijk: 4 (onvoldoende) t/m 0 (goed)	Zwaarte	Totaal (risico * zwaarte)
Zicht Het beeld komt wel/niet overeen		4	
Grip Doelstellingen werken wel/niet door		4	
Totaal	Maximaal risico is 45 punten. Minimaal risico is 0. Bij een risico hoger dan 24 punten: aanvraag afwijzen.		

Article 6. Inclusion in the Register

1. Every applicant whose application has been granted will be included in the Register. The Register is open to the public.
2. The inclusion in the Register takes effect on the day on which the application was granted.

Article 7. Removal of inclusion

1. The institution will be struck from the Register in case of a decision of the National Commission based on Article 9.7 of the Code of Conduct Pilot Scheme Incoming Mobility VET level 4.
2. The Register institution will also be struck from the Register:
 - a. in case of bankruptcy, moratorium of payment or when the activities have been effectively terminated by the educational institution,
 - b. in case of a merger of the educational institution with another institution, and
 - c. when the registration is terminated by the educational institution.

Article 8. Participation in pilot scheme

1. Each year the Register Administrator will judge whether an educational institution may take part in the Pilot Scheme Incoming Mobility VET level 4. Each year the educational institution will submit an application by returning the relevant form, on which the applicant must state the number of participants, their nationalities and the - top ranking - sector.
2. Article 4 of these Rules and Regulations equally applies.
3. If the requirements of the Code of Conduct Pilot Scheme Incoming Mobility VET level 4 are met, the Register Administrator grants inclusion for the applicable academic year.
4. In case the criteria as included in Article 8.1 of the Code of Conduct Pilot Scheme Incoming Mobility VET level 4 have been exceeded, the Register Administrator informs the applicant that participation in the pilot scheme is not possible for the applicable academic year.
5. In case the offered study programme does not satisfy the requirements of the Code of Conduct Pilot Scheme Incoming Mobility VET level 4, the Register Administrator informs the applicant that participation in the pilot scheme is not possible for the applicable study programme.
6. If the situation in paragraph 4 or 5 applies, the Register Administrator will enter an annotation in the Register that the educational institution will not receive international students in the applicable year of the pilot scheme. Continued inclusion in the Register means that the educational institution must fully comply with the Code of Conduct.

Article 9. Consent to sharing of information

1. By submitting an application for inclusion in the Register and the Pilot Scheme Incoming Mobility VET level 4, the applicant consents to having the Register Administrator inform the IND about the number of participants and their nationality.
2. The information referred to in the previous paragraph does not include personal details, but only numbers and nationalities.

Article 10. Obligation of information applicant

1. By returning the annual application for taking part in the Pilot Scheme Incoming Mobility VET level 4, the applicant is obliged to inform the Register Administrator within two weeks from applying for residence permits in case the numbers and nationalities of the participants as submitted by the educational institution to the Register Administrator deviates from the number of applications for a residence permit with the IND.
2. The obligation of information as meant in the previous paragraph equally applies in case the IND refuses a residence permit.

Section 3. The National Commission

Article 11. Task

1. The duties of the National Commission are to ascertain compliance with the Code of Conduct and to check whether the actions of the educational institutions comply with the Code of Conduct Incoming Mobility VET level 4. The Commission does so by, for example:

- a. checking whether the educational institutions comply with the obligation of information as referred to in Article 10 of these Rules and Regulations,
 - b. handling petitions that have been submitted on the grounds of the Code of Conduct Incoming Mobility VET level 4, and
 - c. conducting its investigation into the way an educational institution has acted or is acting under the Code of Conduct Incoming Mobility VET level 4.
2. Section 4 of these Rules and Regulations contains further provisions how to handle petitions and to conduct investigations by the National Commission.
 3. The National Commission can make recommendations to educational institutions.
 4. The National Commission adopts its annual reports and sees to its publication.

Article 12. The secretary

1. The secretary of the National Commission originating from the organization of the Register Administrator will be appointed by the National Commission after being nominated by the Register Administrator.
2. The secretary proposes the agenda for the meetings of the National Commission, and ensures the timely transmission of the documents as well as taking the minutes of the meetings of the National Commission.
3. The secretary keeps records of the fees and other financial means made available to the National Commission by the Dutch Ministry of Education, Culture and Science.
4. The secretary monitors the preparation and periods of the petitions procedure.
5. The secretary prepares the annual reports.
6. The secretary manages the rotation schedule of the members of the National Commission.
7. The secretary ensures timely processing and notification of modifications in the Rules and Regulations.
8. The secretary may perform other tasks; these will be ordered or mandated by the National Commission or by the chairperson to the secretary.

Article 13. Convening meetings of the National Commission

1. The National Commission will meet as often as deemed necessary by the chairperson or by at least two members or their substitutes, but at least once every six months.
2. The venue and the times of the meetings will be decided by the chairperson.
3. The notice of convocation, the agenda and documents are forwarded by the chairperson to the members or their substitutes no later than 7 days before the start of the meeting.

Article 14. Decision-making

Decisions will be made receiving at least two-thirds majority of favourable votes; this includes the chairperson who also has the right to vote.

Article 15. Compliance obligation of information

1. The National Commission checks compliance with the obligation of information by the educational institutions as referred to in Article 10 of these Rules and Regulations by requesting from the IND data concerning the numbers of residence permits granted in the context of this pilot scheme and of the nationalities of the participants.
2. The information referred to in previous paragraph does not include personal details, only numbers.
3. If the National Commission establishes violation of the obligation of information as referred to in Article 10 of these Rules and Regulations, it will impose a sanction on the educational institution which is that the educational institution is excluded from participation in the pilot scheme for the remainder of the period of the pilot scheme.

Section 4. Petitions and review

Article 16. Petition

1. Anyone with a direct interest has the right to submit a petition in writing to the National Commission concerning the way in which an educational institution has acted or is acting towards him/her or someone else under the Code of Conduct Pilot Scheme Incoming Mobility VET level 4.

2. Before submitting a petition to the National Commission concerning the way in which an educational institution has acted or is acting towards them or someone else under the Code of Conduct Pilot Scheme Incoming Mobility VET level 4, the petitioner first lodges a complaint regarding the action to the competent authority of the educational institution concerned, in observance of the provisions of Chapter 9 of the Code of Conduct Pilot Scheme Incoming Mobility VET level 4.
3. The National Commission is obliged to deal with a petition as referred to in the first paragraph, except in those cases as referred to in Article 22, first and second paragraph of these Rules and Regulations.

Article 17. Submitting a petition

1. A petition always contains:
 - a. the name and the address of the petitioner;
 - b. a copy of the identity card of the petitioner;
 - c. the submission date;
 - d. a description of the action that is the subject of the petition, the name of the person who has acted in this manner and the name of the person towards whom the action has taken place, if they are not the petitioner;
 - e. the grounds of the petition;
 - f. the way in which a complaint has been submitted with the educational institution, and if possible the findings of the investigation of the complaint by the educational institution, its opinions and any conclusions.
2. In case the petition is written in a different language than the Dutch or the English language, and a translation is needed to properly investigate the petition, the petitioner provides a Dutch or English translation.
3. If the requirements of this Article are not satisfied, the National Commission gives the petitioner the opportunity to rectify the omission within a stipulated period.

Article 18. Confirmation of receipt

1. The secretary will confirm receipt of the petition in writing within five working days of the day of receipt.
2. If the petition has been addressed incorrectly, the secretary forwards the petition as soon as possible after recording the date of receipt to the correct authority, and notifies the petitioner immediately.

Article 19. No suspensive effect

Submitting a petition to the National Commission does not suspend the decision coming into force.

Article 20. Costs of the petition procedure

1. Any costs incurred by the petitioner in relation to this complaint¹, are for their own account.
2. Contrary to the provisions of the first paragraph, should in the opinion of the National Commission serious reasons exist, the National Commission can compensate the petitioner after a request to this effect. This compensation will be paid by the educational institution the petition relates to.

Article 21. Competence of the National Commission

The National Commission is only competent to judge the action of an educational institution which occurred after the day on which the inclusion in the Register has taken effect.

Article 22. No obligation to process the petition

1. The National Commission can decide not to process a petition, or to discontinue the consideration thereof, if:
 - a. the petition does not satisfy the requirements as referred to in Article 17, first and second paragraphs of these Rules and Regulations;
 - b. the petition is manifestly unfounded;

¹ These are the costs that the petitioner properly incurred in connection with the complaint procedure. These include for instance the fees of a legal assistance counsellor, experts, travel costs and the fee of an interpreter or translator.

- c. the interest of the petitioner is manifestly insufficient or the seriousness of the action is manifestly insufficient;
 - d. the requirements of Article 16, second paragraph of these Rules and Regulations, have not been satisfied;
 - e. the petition refers to an action against which a complaint has been lodged by the educational institution concerned, unless this complaint should already have been concluded in accordance with the applicable complaint policy of the related educational institution;
 - f. the petition refers to an action against which another procedure has been submitted or another mechanism is already in place;
 - g. a petition that relates to the same action is already being processed by the National Commission or has been concluded, except if a new fact or a new circumstance has been revealed which could result into a different opinion of said action;
 - h. after intervention by the National Commission and in the opinion of the National Commission, the complaints of the petitioner have been met properly;
 - i. the petition refers to an action for which a relevant warrant of arrest has been issued by the public prosecutor or is subject to prosecution, or if the action forms part of the criminal investigation or prosecution of a punishable action and a relevant warrant of arrest has been issued by the public prosecutor or is subject to prosecution.
2. Furthermore, the National Commission may either decide not to consider or to discontinue the procedure if a petition is submitted more than one year after:
 - a. consideration of the complaint has been concluded by the educational institution, or should have been concluded in accordance with the prevailing complaint policy at the educational institution, or
 - b. after the action to which the petition relates took place.
 3. In case the National Commission does not consider a petition based on the first or second paragraph, the Commission informs the petitioner stating the reasons as soon as possible but no later than eight weeks after receipt of the full, substantiated petition in writing.
 4. Should the National Commission discontinue the consideration, it also sends notification as referred to in the third paragraph to the educational institution, and, if applicable, to the person whose action is the subject of the petition.

Article 23. Explanation of point of view

1. The National Commission will give the educational institution, the person who has committed the action to which this petition relates to, and the petitioner the opportunity to explain their points of view and to respond to the arguments used.
2. The National Commission decides whether the explanation should be in writing and/or orally and whether or not this explanation should be given by the petitioner, the educational institution and the person who has committed the action related to this petition in each others presence or separately.

Article 24. Obligation to provide information

The educational institution and persons working under its responsibility - even after concluding employment - as well as the petitioner will provide the National Commission the necessary information and appear after receiving an invitation to this effect.

Article 25. Processing time

1. The National Commission will conclude the petition within twelve weeks after the receipt of a fully submitted petition. In case of a pro forma complaint the period referred to in the first sentence starts on the date of receipt of the grounds on which the complaint is based.
2. The National Commission cannot postpone conclusion for more than eight weeks.
3. The secretary gives a written notice of postponement to the petitioner, the educational institution and to the person whose action is the subject of the petition.

Article 26. Findings and opinion

After the procedure has been concluded, the secretary of the National Commission informs the petitioner, the educational institution, the person whose action is the subject of the petition as well as the Dutch Inspectorate of Education in writing, supported by reasons of the findings of the investigation into the action and the opinion of the National Commission. Recommendations, conditions or a disciplinary measure as referred to in Article 28, may form part of the opinion.

Article 27. Consequences

1. If the National Commission upholds the petition, it can order the educational institution to make a new decision or perform another action with due observance of its opinion.
2. Part of such opinion may be a compensation of the costs by the educational institution in relation to the petition, as referred to in Article 20 of these Rules and Regulations.
3. If the National Commission upholds the petition, it can include recommendations, conditions or a disciplinary measure, as referred to in the following Article.

Article 28. Disciplinary measure

The disciplinary measure referred to in the previous Article consists of entering an annotation in the Register. Furthermore, the National Commission may decide to have the educational institution removed from the Register.

Article 29. Registration and publication

1. The secretary ensures registration of the petitions filed with the National Commission.
2. Registered petitions and conclusions are published in the annual reports, on the website and in publications of the National Commission.

Article 30. Petitions concerning the National Commission

Petitions concerning the National Commission, its secretary or its researcher are to be addressed to the chairperson of the National Commission.

Article 31. Petitions concerning the Register Administrator

Petitions concerning the Register Administrator are to be submitted to the Register Administrator. This section, with the exception of Article 27, paragraph two and three, as well as Article 28, equally applies.

Section 5. Final provision

Article 32. Commencement date

These Rules and Regulations take effect on 28 September 2018.