

Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

Secretariat

p.o. box 201, 3500 AE Utrecht/The Netherlands
phone 0031 30 297 43 28
fax 0031 30 296 00 50
e-mail cie.meijers@forum.nl
http://www.commissie-meijers.nl

The Meijers Committee update No.1 March 2013

In this update information on our recent comments and letters is given and the results of our work are shared.

Memorandum concerning the Dutch Coalition Agreement concluded on 29 October 2012

On the 18th of January 2013 the Meijers Committee published a memorandum concerning the Dutch Coalition Agreement concluded between the VVD (People's Party for Freedom, Security and Justice) and the PvdA (Labour Party) on 29 October 2012. In this memorandum the Meijers Committee analyses proposals contained in the Dutch Coalition Agreement in the areas of security and justice and immigration, integration and asylum from an international and European law perspective.

The Meijers Committee underlines in this memorandum the importance of international and European regulations, as they are an expression of broadly shared values concerning the treatment of people. Also, the Committee notes that the free movement of persons, an essential part of the EU, cannot be enjoyed without also accepting the free movement measures which, in some situations, are regarded by certain Member States as disadvantageous.

In the light of these remarks, the Committee concludes that various proposals in the Dutch Coalition Agreement are incompatible with international and European regulations. Examples are the proposal to exclude individuals from social assistance benefits when the person cannot speak Dutch, the proposal to extend the period from five to seven years during which aliens must have been resident in the Netherlands to vote in municipal elections, to qualify for naturalisation and to retain their residence rights when applying for social assistance benefits and the proposal to raise again the level of integration tests, both in the Netherlands and abroad.

This memorandum was sent to the Dutch State Secretary of Security and Justice, the Minister for Social Affairs and Employment, the House of Representatives, the Senate, the European Commission and the members of the LIBE- Committee.

More information:

- Memorandum Meijers Committee concerning the Dutch Coalition agreement of October 2012
 - [in English](#)
 - [in Dutch](#)

The implications of the ECtHR Stamose judgment for visa liberation negotiations

The ECtHR ruled on 27 November 2012 in the case of *Stamose v. Bulgaria* (appl.no. 29713/05) that a travel ban for the duration of two years imposed by Bulgaria on one of its nationals for having violated US immigration laws and being deported back to Bulgaria was in violation of the right to leave any country, including his own, as protected under Article 2 Protocol No.4 of the European Convention on Human Rights. The European Court notes in the judgment that the travel ban and the seizure of the applicant's passport were based on Bulgarian legislation that was adopted in the course of negotiations with the EU on visa liberalisation in the 1990s and which aimed at restricting the abuse of visa free travel. According to the Meijers Committee, this case underlines the concerns earlier expressed by the Committee that EU pressure on third countries to prevent abuse of visa free travel could interfere with the human rights to leave one's country and to seek asylum, and that there are worrying signs that such pressure results in discriminatory

practices of border control by third countries. In this letter, the Meijers Committee advises the European Commission to closely review and, if necessary, to reconsider the type of requirements that it demands from third countries in the context of visa liberalisation.

The European Commission replied to the letter of the Meijers Committee on 21 February 2013. In this letter, the Commission indicates that it has always sought to strike a balance between upholding the fundamental rights of all third-country nationals visiting the Schengen area and maintaining a secure environment for the EU's visa-free travel regime. The Commission requires the strengthening of border controls in line with the Schengen acquis, including fundamental rights, but it has never requested exit controls from its partners in the Western Balkans, and neither will it request such a measure in ongoing and future visa liberalisation dialogues. The Commission will continue to pay particular attention to maintaining visa-free travel for third-country nationals in a manner that upholds their fundamental rights while ensuring the security of the Schengen area.

More information:

- [Letter Meijers Committee on the implications of the ECtHR Stamose judgment for visa liberalisation negotiations:](#)
- [Note Meijers Committee on the Proposal to introduce a safeguard clause to suspend visa liberalisation \(COM\(2011\) 290 final\).](#)

Access to Eurodac by law enforcement authorities and Europol

With the deadline for completion of the Commission European Asylum System coming closer, the European Commission again proposed the possibility of granting access for law enforcement authorities and Europol to Eurodac in a proposal which was published on 30 May 2012. Until then the negotiations on the 2010 proposal, that did not contain access for law enforcement authorities and Europol to Eurodac, remained on hold due to the fact that an overwhelming majority of the Council continued to support the insertion of provisions enabling law enforcement authorities to access Eurodac.

In its response, published in September 2012, the Meijers Committee restated its concerns which it had expressed with respect to earlier attempts by the European Commission to include access for law enforcement authorities and Europol (in 2007 and 2009) to Eurodac. The Meijers Committee is of the opinion that access for law enforcement authorities and Europol to Eurodac violates fundamental rights of asylum seekers, including the right to privacy and data protection, the right to asylum and protection against torture and inhuman treatment, and will lead to stigmatisation of this particular group. However, taking into account the political reality that access will most likely be accepted in the new proposal, the Meijers Committee not only advises the European Parliament to vote against the proposal, but also suggests amendments to improve the standards in Eurodac and to surround access with sufficient safeguards.

On 19 December 2012 the LIBE Committee adopted its orientation vote and accepted access for law enforcement authorities and Europol. The Committee, however, recognised the concerns of the Meijers Committee (and other organisations such as the EDPS) and implemented various suggestions for the improvement of the standards in Eurodac. Strict and short time limits for the storage of data are included. Article 13 in the draft report now obliges the Central Unit to inform the Member States of origin *no later than 72 hours* after it has become clear that the person has acquired citizenship. Article 17 includes that the comparisons of fingerprint data of a third country national or a stateless person found illegally staying within EU territory are deleted immediately after the data have been transmitted.

The criticism by the Meijers Committee with respect to the proposal of the European Commission to mark data of persons who are granted international protection, instead of blocking those data, was also taken into account in the orientation vote. The result of this "marking" would be that data can be transmitted, even if the applicant has been granted international protection. This is even more problematic in the light of the proposal to give access to Eurodac for law enforcement authorities and Europol, since data will become available to a wider group of authorities. Stricter criteria for access by law enforcement authorities and Europol, a stronger role for the data protection supervisory authority and stricter criteria for the transmission of data to third countries are also implemented in the draft report. Currently the negotiations on the proposals by LIBE and the Council are ongoing.

On the national level, the Eurodac proposal has also been extensively discussed. In a series of letters between the Dutch State Secretary for Security and Justice and the Meijers Committee the various

concerns were discussed. These letters were further discussed in a separate meeting on Eurodac between the Dutch House of Representatives and the State Secretary for Security and Justice. The Dutch House of Representatives questioned especially the necessity and proportionality of the proposal, the risk of stigmatisation and the breach of fundamental rights in general. On Tuesday 5 March 2013, three motions were passed in the Dutch House of Representatives, calling upon the Dutch government to evaluate the possible stigmatising effects of Eurodac, to motivate its decision when the government deviates from the opinions of the data protection authorities on Eurodac and to discuss in the next Justice and Home Affairs Council the condition that access to Eurodac is only allowed when there is an indication that it concerns an asylum seeker.

More information:

[- Note Meijers Committee on the Eurodac proposal of 10 October 2012;](#)

[- Draft report LIBE Committee of the European Parliament on the Eurodac proposal of 19 December 2012;](#)

[- Note Meijers Committee to the Dutch House of Representatives on Eurodac of 28 November 2012 \(in Dutch\);](#)

[- Reaction State Secretary for Security and Justice to the letter by the Meijers Committee of 3 December 2012 \(in Dutch\);](#)

[- Reaction Meijers Committee to the letter of the State Secretary for Security and Justice of 24 January 2013 \(in Dutch\);](#)

[- Reaction State Secretary for Security and Justice to the letter by the Meijers Committee of 30 January 2013 \(in Dutch\).](#)

The exclusion of minor offences in the proposal for a Directive on access to a lawyer

The Meijers Committee has been very committed in the negotiations on the proposal for a Directive on access to a lawyer. The Committee has published reactions in various stages of the negotiations, explicitly asking for a right for the individual to have an active lawyer present during any questioning or hearing, starting from the earliest stage of criminal proceedings. EU law should not hesitate to surpass the minimum level that is already established by the European Court of Human Rights.

The Meijers Committee is worried about the more recent line by the Council to exclude "minor offences" from the Directive. Apparently the Netherlands is at the forefront of including this exclusion, as it is informally called "the Dutch exception". In a letter sent to the Dutch House of Representatives, the Meijers Committee urges to clarify in the Directive what should be considered as a minor offence. After all, it may differ from Member State to Member State which offences are considered as such; to leave the interpretation to the national level would result in unequal protection of the rights covered by the Directive. For the Netherlands, the current text would mean that a large percentage of the offences will be excluded from the Directive. The Meijers Committee doubts that the categorical exclusion of minor offences would be in line with the right to a fair trial under Article 6 ECtHR. This doubt was also expressed by the Council of Europe in its opinion of 20 September 2012 on the Directive. The Meijers Committee advises that the Directive in any case applies when the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings. Moreover, the Directive should guarantee that in all situations Article 6 ECtHR will be respected.

The Dutch Minister for Security and Justice responds to the concerns of the Meijers Committee in an elaborate letter, published on 15 January 2013. In line with the Meijers Committee recommendations, the Minister agrees that the definition of "minor offences" should be clarified. The Minister is of the opinion that the current text reflects a sufficient clarification of what should be considered as "minor offences" that are excluded from the Directive. He clarifies that in the current state of play the right to a fair trial is guaranteed and the Directive shall always apply when the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

More information:

- [Note Meijers Committee on the proposal for a Directive on the right of access to a lawyer and the right to communicate upon arrest, 13 September 2011;](#)
 - [Note Meijers Committee on the proposal for a Directive on the right of access to a lawyer and the right to communicate upon arrest, 30 May 2012;](#)
 - [Letter Meijers Committee on the meeting of the House of Representatives and the Dutch Government on the Justice and Home Affairs Council of 7 and 8 June 2012, 30 May 2012 \(in Dutch\);](#)
 - [Letter Meijers Committee on the meeting of the House of Representatives and the Dutch Government on the Justice and Home Affairs Council of 6 and 7 December 2012, 28 November 2012 \(in Dutch\);](#)
 - [Response Dutch Government to the letter of the Meijers Committee, 15 January 2013 \(in Dutch\).](#)
-

About the Meijers Committee

This update is issued by the Meijers Committee, Standing Committee of Experts on International Immigration, Refugee and Criminal Law, an independent committee established in 1990 which aims at informing, in the early stages of European decision-making, about the content and legal implications of European legislative proposals in the areas of Justice and Home affairs.

If you would like to know more about the Meijers Committee, follow [this link](#).

If you would like to read more of our work, follow [this link](#) to all our comments.

If you have comments or suggestions on this update, please send us an email.

Contact us:

Tel: +31 (0)30 297 4328

Fax: +31 (0)30 296 0050

Email: cie.meijers@forum.nl

Website: www.commissie-meijers.nl