

Meijers Committee

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



Summary annual report 2017

The following is a short summary of the comments that the Meijers Committee wrote in 2018 and some of its successes. The extended version can be found on the website in Dutch language.

1. Privacy and non-discrimination

ePrivacy

The ePrivacy Regulation, which concerns the internet usage including cookies and spam, prompted the Meijers Committee (hereafter 'the Committee') to plead for guaranteed privacy of electronic correspondence, in a letter addressed to the European Commission. This letter was subject to a discussion between the Dutch House of Representatives (*de Tweede Kamer*) and the Minister for Economic Affairs on 21 February 2017. The minister endorsed parts of the conclusion made by the Meijers Committee and commented that additional EU legislation would be required.

Passenger Name Record (PNR)

Passenger Name Record (PNR) is a collection of travel data which air carriers must provide to law enforcement agencies. Proposals to expand this to other forms of international transport were assessed critically by the Meijers Committee. These proposals may be in conflict with applicable EU law and the Committee indicated which limitations must be taken into account. Furthermore, the Committee deems a preventative privacy impact assessment and a necessity and proportionality test appropriate. The Committee's note is being discussed with the Dutch Ministry of Security and Justice and is used by the European Passengers' Federation to ask questions to the governments of Member States involved, about the legality and compatibility of proposals with EU law.

2. Institutional law

Joint Parliamentary Scrutiny Group (JPSG)

The anticipated Joint Parliamentary Scrutiny Group (JPSG) operationalizes and warrants the political monitoring of Europol (Article 51 Europol Regulation) by the European Parliament together with the national parliaments. The Meijers Committee pleaded for:

- 1. Improvement of procedural rules**
- 2. Objectives of the parliamentary control**

The Committee proposes to set up a small group of parliamentarians and pre-emptively regulate the cases which Europol declares confidential. The note has led to an exchange of views with the Dutch Senate and the Dutch House of Representatives and was used in Brussels.

Transparency in the EU

The Meijers Committee recommends that national parliaments work together to address violations of transparency by the Council of the EU. This advice has been embraced by the Dutch parliament.

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According to the Committee, Union law requires that all national regulations and administrative procedures are in line with the European treaties. In October 2017, the Committee was represented at a public hearing on this matter and has been asked for its opinion by the Dutch House of Representatives.

The Committee expressed support for a law that would regulate the information position of the Dutch Parliament regarding the access to EU documents (*initiatief wet informatiepositie Staten-Generaal*). The members of parliament Maij (PvdA; Dutch labour party) and Mulder (VVD; People's Party for freedom and democracy) proposed this law. The Meijers Committee also made suggestions for improvement. The State Commission on the Parliamentary System (*de Staatcommissie parlementair stelsel*) referred to the suggestions for improvement proposed by the Meijers Committee over the past years, in its preliminary report on 21st June 2018.

3. Asylum law

The Meijers Committee and the Netherlands Institute for Human Rights (het *College voor de Rechten van de Mens*) co-organised a conference based on their jointly written paper 'Humans Act or Devil's Pact? Human rights aspects of migration agreements between EU and third countries on 18 May 2017.

Common European Asylum System

The Meijers Committee wrote a comment regarding the proposed amendments to the Dublin Regulation and the proposed regulations on procedures and qualification in 2016. Furthermore, the Meijers Committee participated in contact groups set up by the Rapporteurs to the European Parliament regarding these topics. The main points of the Committee are:

- The distinction between refugee status and subsidiary protection status leads to insecurity of the persons concerned in the long run;
- To concept of a country as a safe third country (even though such a country may not be party to the Refugee Convention) has no regard for the specific circumstances of each individual;
- The harmonization of admission standards leads to potential sanctions against transients which, in turn, gives rise to doubts about the compatibility of such measures with the EU Charter and the jurisprudence of the European Court of Justice (ECJ) and the European Court of Human Rights (EctHR);
- The Meijers Committee disagrees with the proposal to accommodate asylum seekers in the long term without providing financial means. With regards to the problematic experiences in the reception centre of Heumensoord in the Netherlands in 2015/16, the Committee points out that such a situation is in conflict with the European Directive 2013/33 regarding the standards for the reception of applicants for international protection. This stance is supported by several Members of the European Parliament.

Coalition agreement of the Dutch government

- The Meijers Committee has pointed to a number of crucial legal and practical requirements with regard to the coalition agreement. This includes the support for agreements like the one

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with Turkey (security, stability, a solution for asylum seekers who have been rejected) and external processing.

Furthermore, the Meijers Committee comments on the following:

- Preventing the entry of migrants to Europe: the proposal to prevent migrants to enter the EU spontaneously presumes that there are safe third countries and requires international agreements that enable democratic and legal supervision by national and European institutions.
- Returning migrants, who have been picked up at sea, to their country of departure without any security about their future, identification or a start of an asylum procedure violates the non-refoulement principle.
- Combatting migration crime can better be executed by international cooperation than trying to enforce binding judgements by an international tribunal.
- Proposed measures against asylum-shopping must not be treated separately from the distribution arrangement of asylum seekers. There are concerns regarding the improvement of asylum seekers' reception conditions in EU countries with only a minimum standard.
- Further research is required in order to determine whether the proposal to pay legal aid only if there is an intention to reject a request for asylum undermines the quality of legal aid. (This topic has been discussed between the Meijers Committee and the Dutch Minister for Migration, Minister Harbers on 11th December 2017).
- Regarding the reform of the nationality law, the Meijers Committee points towards article 7 TEU and to the practice in Germany, which (partially) abolished the obligation to decide for one nationality for children who have been born and raised in Germany, but whose parents are not German nationals. Moreover, the Meijers Committee recommends the adoption of the *ius soli* principle.
- Regarding the proposal to join the European Public Prosecutor's Office (EPPO) the Meijers Committee recommends treating this proposal independently from the expediency principle of the Dutch public prosecutor's office and to demand clear guidelines. In principle, basic aspects of legal protection and legal control must be respected.

Jurisprudence

The administrative jurisdiction division of the Dutch Council of State (*Raad van State*) delivered a verdict in line with the Meijers Committee's "Note on an EU list of safe countries of origin, recommendations and amendments" on 1 February 2017.

4. Immigration law

The European Travel Information and Authorisation System (ETIAS) registers travellers who enter the EU but do not require a visa. The Meijers Committee points out the following with regard to ETIAS proposal:

- In view of recently approved entry-exit system, the necessity of an additional data collection is questionable;
- The Meijers Committee casts doubt on the effectiveness, the proportionality and availability of sufficient guarantees (as defined by the ECJ) of the ETIAS proposal;

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- The admission to the EU depends on the reliability of large-scale databases and the check of risk profiles against which travellers can hardly defend themselves.

The European Criminal Records Information System for Third Country Nationals (ECRIS- TCN)

The European Criminal Records Information System for Third Country Nationals (ECRIS- TCN) facilitates the exchange of data regarding national criminal records, including the data on non-EU citizens, third-country nationals and stateless persons, across the EU.

The Meijers Committee formulated a number of questions regarding ECRIS-TCN presented to the Dutch Minister of Justice. Furthermore, the Meijers Committee drafted an extensive comment (in English language) on the proposal, including the following points of criticism:

- EU citizens who are also third-country nationals are not treated equally to EU citizens, creating first and second-class citizenship.
- On top of personal data, the system stores biometric data and, therefore, poses a risk to the individuals involved regarding their legal position. Eventually, the European Parliament took the view that EU citizens should be excluded from the database to prevent discrimination, whereas the European Council took the view that EU citizens with dual citizenship should be included as well in order to ensure equal treatment.

5. Criminal law

Fourth Anti-Money Laundering Directive

The Meijers Committee supports the proposal of the European Commission to adopt an Anti-Money Laundering Directive because the criminalisation of money laundering requires more cohesion. Despite this, the Committee points out that some elements of the proposal need to be revised in accordance with the principle of proportionality (Article 5(4) TEU). According to the Committee, mandatory criminalisation of money laundering is only justified in very serious cases (and cases with a transnational dimension). On request of the Rapporteur of the European Parliament, the Committee's Member participated in a consultation concerning this topic.

Freezing and confiscation of the proceeds of crime

The Meijers Committee issued a recommendation regarding the directive on the mutual recognition of freezing and confiscation orders across the EU. In this respect, the Committee criticised the use of criminal law and the fact that the draft proposal lacks a clear explanation on whether the indicated legal remedies against confiscation without conviction are effective in practice. In addition, the Committee demands a solid justification for the proposed directive with regards to fundamental human rights. In view of the Committee, people concerned must be able to assert their claim not only in the country that executes but also in the country that decides the cases of freezing and confiscation of proceeds of crime of third-country nationals. In contrast to the previous directive 2014/42/EU, the new proposal suggests recognising confiscation orders without conviction. This violates the principle of presumed innocence. The Committee drafted a comment on this directive, for the use in the European Parliament.