

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

Secretariaat
postbus 201, 3500 AE Utrecht/Nederland
telefoon 31 (30) 297 42 14/43 28
telefax 31 (30) 296 00 50
e-mail cie.meijers@forum.nl
http://www.commissie-meijers.nl

To JLS-CRIMINALJUSTICE@ec.europa.eu

by e-mail

Reference CM1001
Regarding Reply to the Green Paper on obtaining evidence in criminal matters from one Member State to another and securing its admissibility (Brussels, 11.11.2009, COM(2009) 624 final).
Date 12 January 2010

In reply to the Green Paper, the Standing Committee would like to bring up a few questions and comments.

1. A first point regards the assumption that the existing instruments based on mutual recognition maybe regarded as unsatisfactory, especially because they only cover special types of evidence and contain a large number of refusal grounds (p. 4). In the opinion of Standing Committee, it is far too soon to draw such a conclusion with regard to the Framework Decision on the European evidence warrant of 18 December 2008 (OJ 2008, L 350.). After all, this framework decision has not yet been transposed in the national legal systems of the Member States. As a consequence, it has not been evaluated either. In view of article 70 of the Treaty on the Functioning of the European Union, the Standing Committee recommends the European Commission to await the implementation of the framework decision by the Member States and to arrange an evaluation on the practical value of the European evidence warrant in its current form, before making efforts to design a new instrument.

2. The Standing Committee would like to question the issue of admissibility of evidence obtained in another Member State. It appears from the Green Paper that the European Commission prefers common standards for gathering evidence in order to avoid its inadmissibility or its reduced probative value in foreign proceedings. However, the Standing Committee wonders whether the hindrances are indeed related to the admissibility or inadmissibility of evidence. Why wouldn't it follow from the principle of mutual recognition that the admissibility of evidence gathered in another Member State should not be questioned in the prosecuting Member State?

3. In addition to the previous question, the Standing Committee feels that problems are more likely to occur with determining the probative value of evidence that has been gathered abroad. To solve such problems though, common norms on evidence gathering will not be useful. It is therefore quite doubtful whether the issue of obtaining evidence between Member States would be facilitated by establishing Union-wide standards on the gathering of evidence.

4. One of the questions raised in the Green Paper is whether certain types of evidence would require specific rules in a future instrument on obtaining evidence between Member States (question 2). According to the Standing Committee, specific rules are firstly required for expert evidence. In this respect, objective requirements should be created to guarantee the quality and reliability of expert witnesses. The Dutch legislation on setting up a Dutch Register of Expert Witnesses (Nederlands Register Gerechtig Deskundigen) may be a source of inspiration. To be admitted to this national register, experts must fulfill certain conditions. Every four years, a successful review may lead to the prolongation of their registration.

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

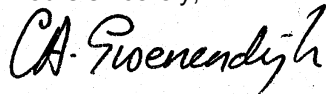
• Comité Meijers
Comité permanent d'experts en droit
international de l'immigration,
des réfugiés et du droit pénal

• Meijers-Ausschuss
Ständiger Ausschuss von
Experten im internationalen
Ausländer-, Flüchtlings- und Strafrecht

5. Secondly, specific rules are also required for the hearing of vulnerable witnesses, who are not able to testify in court (e.g. children or disabled persons). In order to enable such persons to be heard while at the same time respecting their vulnerable position, the Standing Committee strongly advocates that rules are created on audio taping the testimonies of vulnerable witnesses.

We hope our above comments and questions are useful. Should other question arise, the Standing Committee is prepared to provide you with further clarification and information.

Yours sincerely,



Prof. dr. C.A. Groenendijk
Chairman