

to The Members of the LIBE Committee  
c/o Secretariat  
European Parliament  
By e-mail

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

**Mailing address**  
Postbus 2894  
1000 CW Amsterdam

**Visiting address**  
Surinameplein 122  
1058 GV Amsterdam

**Ph** (+31) 020 362 0505

**W** [www.commissie-meijers.nl](http://www.commissie-meijers.nl)

**E** [post@commissie-meijers.nl](mailto:post@commissie-meijers.nl)

date 30 April 2015

reference CM1507

subject **Note on the LIBE amendments to the draft directive Presumption of Innocence**

Dear members of the LIBE Committee,

In view of the ongoing negotiations concerning on the proposal for a directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings (COM(2013)0821 – C7-0427/2013 – 2013/0407(COD)), the Meijers Committee has prepared the following note on the amendments adopted by the LIBE Committee.

As always, we remain at your disposal for questions and comments.

Identical letters were sent to the Commission and the General Secretariat of the Council.

Sincerely,



Theo de Roos  
Chairman

# Note on the LIBE amendments to the draft directive Presumption of Innocence

The Meijers Committee has carefully examined the amendments adopted by the LIBE Committee to the proposal for a directive on strengthening certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings.<sup>1</sup> As explained below, the Committee considers the adoption of a number of these amendments highly advisable in order to provide strong procedural rights in this matter, but also in light of previously created cooperation mechanisms in criminal affairs.

## Material scope

As stated in its previous note on the Council General Approach<sup>2</sup>, the Meijers Committee recommends that Article 2 be expanded to cover **all administrative proceedings and investigations that can lead to punitive sanctions**. In order to ensure the inclusion of such administrative proceedings and investigations, it is suggested that *amendment 6* be adopted.

However, in order to avoid any uncertainty on the matter, the Meijers Committee strongly recommends that a reference should also be included in the binding provisions in Article 2. This would be achieved by the adoption of *amendment 39*.

## Personal scope

The Meijers Committee proposes that the personal scope of the Directive **be extended to legal persons**, in order to comply with standing case-law of the ECtHR on Article 6(2) ECHR. This provides an additional reason (in conjunction with the previous issue) to adopt *amendment 39* to Article 2.

## Public references to guilt

In order to clarify Article 4(1) on the prohibition against public authorities referring to suspects or accused persons as if they were guilty before they have been proven to be so, the Meijers Committee has proposed **inclusion of the criteria developed in ECtHR case-law** on the matter. Since *amendment 41* amounts to the inclusion of the ECtHR criteria, The Meijers Committee strongly recommends that this amendment be adopted.

In addition, given that *amendment 41* contributes to a **clearer definition of ‘appropriate measures’** in the sense of Article 4(2) – by referring to independent investigations and the right of access to an effective remedy – this amendment merits serious consideration.

## Burden of proof

The Meijers Committee would welcome the **deletion of the possibility in Article 5(2) to transfer the burden of proof** to suspects or accused persons. The Committee therefore supports that part of *amendment 43*.

---

<sup>1</sup> Committee report tabled for plenary, 1st reading/single reading, 21 April 2015 (A8-0133/2015).

<sup>2</sup> Meijers Committee, Note on the General Approach on the Directive Presumption of Innocence, 12 December 2014 (CM1406).

### Standard of proof

Because **complete harmonization of a standard of proof for criminal liability is considered undesirable**, the Meijers Committee recommends the deletion of paragraphs 2a and 3 of Article 5. Would the majority be of the opinion that a common standard of proof should be adopted, *amendment 43* ('any doubt') is preferred above the Commission's proposal ('reasonable doubt'), since it is more neutral towards civil law vis-a-vis common law systems. However, the Meijers Committee warns that **an unqualified definition of 'doubt' may lead to highly unsatisfying results.**

### Evidence obtained in breach of the right not to incriminate oneself

The reintroduction at plenary and adoption of *amendment 176*, *amendment 177*, *amendment 178*, or *amendment 180* which were tabled in the LIBE Committee would be welcomed,<sup>3</sup> since the Commission's proposed Article 6(4) provides too broad an exception to the rule that 'any evidence obtained in breach of this Article shall not be admissible'; the proposed exception would apply where the use of such evidence 'would not prejudice the overall fairness of the proceedings'. As the Meijers Committee has previously stated, only the narrower exception clause could be accepted, covering situations where the use of such evidence would not prejudice *the defendant's rights*. Deletion of the paragraph is undesirable as it leaves Member States with too large a margin of discretion on this issue. **Clear rules on the admissibility of wrongfully obtained evidence should be at the heart of building mutual trust in the legal systems of the Member States.**

\* \* \*

## About

*The Meijers Committee is an independent group of legal scholars, judges and lawyers that advises on European and International Migration, Refugee, Criminal, Privacy, Anti-discrimination and Institutional Law. The Committee aims to promote the protection of fundamental rights, access to judicial remedies and democratic decision-making in EU legislation.*

*The Meijers Committee is funded by the Dutch Bar Association (NOvA), Foundation for Democracy and Media (Stichting Democratie en Media) the Dutch Refugee Council (VWN), Foundation for Migration Law Netherlands (Stichting Migratierecht Nederland), the Dutch Section of the International Commission of Jurists (NJCM), Art. 1 Anti-Discrimination Office, and the Dutch Foundation for Refugee Students UAF.*

### Contact info:

Louis Middelkoop

Executive secretary

[post@commissie-meijers.nl](mailto:post@commissie-meijers.nl)

+31(0)20 362 0505

Please visit [www.commissie-meijers.nl](http://www.commissie-meijers.nl) for more information.

<sup>3</sup> Amendments 45-224, 6 March 2015 (PE546.821).