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Proposals for revision of EU migration law and international law in the September 2010 Dutch coalition agreement

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PROPOSALS FOR REVISION OF EU MIGRATION LAW AND INTERNATIONAL LAW IN THE SEPTEMBER 2010 DUTCH COALITION AGREEMENT

*Kees Groenendijk**

The six pages of new measures on immigration and immigrant integration in the (draft) coalition agreement between the conservative VVD and the Christian-democratic CDA contain a series of proposals to amend EU law and international law. The text is repeated word for word in the agreement between these two parties and Geert Wilders party (PVV).

The agreement explicitly confirms that the Netherlands will comply with its obligations under international law. Maximum use will be made of the remaining room for manoeuvre under the ECHR in order to reduce family migration. If the proposed measures are not possible within the existing EU Directives or international, those directive and the relevant treaties have to be amended. The aim of the policy is to realize “a very substantial reduction of immigration”. Wilders asked for a 50% reduction, but no figures are mentioned in the agreement. Hereunder, I summarize the main proposals.

Qualification Directive 2004/86/EC

This directive has to be amended in order to place the burden of proof more on the asylum seeker, who will have to prove that he has no flight alternative.

Family Reunification Directive 2003/86/EC

According to the coalition agreement the Netherlands will campaign for the following seven amendments of this directive:

- Raise minimum age of spouse from 21 to 24 years
- Admission of one partner per ten years
- Raise income requirement to 120% of minimum wage again [This amounts to a reversal of the Chakroun judgment of the Court of Justice of 4 March 2010.]
- Sponsor should provide a financial warranty before his family members are admitted.

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- Introduction of a test that the ties with the Netherlands prevail over the ties with other countries. [A similar condition was introduced in Danish national law some years ago.]
- Family members of a person who is convicted for certain violent crimes will not be admitted.
- The possibility to introduce an educational requirement: only family member with a level of education sufficient for integration and participation will be admitted

In my view four more proposed measures are incompatible with Directive 2003/86:

- The level of the integration test that spouses and partners have to pass abroad will be raised.
- The fees for visa or residence permit for family reunification will be raised. [At present the fee is € 830 plus € 350 for each time the integration exam is taken plus € 188 for each additional family member.]
- Prohibition of marriage between cousins. [Since this measure is mentioned in the paragraph on reduction of family reunification, the apparent aim is to no longer recognize those spouses as a spouse under the Directive.]
- An unspecified period of residence abroad will become a ground for withdrawal of the residence permit. [Article 16 does not contain such a ground for withdrawal.]

Directive 2003/109/EC on the status of long-term residents third-country nationals

- Introduction of an educational requirement: the applicant has to have a level of education sufficient for integration and participation.

Two other proposals may create problems under this directive:

- The general proposal that an unspecified period of residence abroad will become a ground for withdrawal of residence permits disregards Article 9(1)(c) of this directive.
- The government will no longer pay for the integration course. Third-country nationals will have to pay the market price [approximately € 6,000,-] themselves.[Since 1.1.2010 passing the integration exam is a condition for the EC long-term resident status in the Netherlands. Does the EU law proportionality principle allow to require all immigrants, irrespective of their educational level, to pass a test at the same level and bear all the costs of the language and integration courses before the long-term resident status is granted?]

Directive 2004/36/EC on the free movement of Union nationals

- An amendment that will widen the possibilities for expulsion of Union nationals after a criminal conviction.
- Third-country family members of EU migrants will not be admitted if they have or ever had unlawful residence in the Member State.
- National law applies to the admission of third-country family members of EU migrants.

EU measure against regularizations

- The government will promote the adoption of an EU measure that forbids Member States to decide a regularization (“pardon”). [In 2007-2009 almost 30,000 former asylum seekers, whose stay in the Netherlands had been tolerated for more than six years, received a residence permit under such regularization campaigns.]

Association EEC-Turkey

- Association Agreement has to be amended in order to oblige Turkish national to pass the integration test and apply the financial and residence right sanctions to those who do not pass in time. Dutch nationals and EU nationals are exempted from the Integration Act. [In the paragraph on EU Enlargement the EU membership of Turkey is not explicitly mentioned.]

Accession Treaties with Bulgaria and Romania

- No free movement for Bulgarian and Romanian workers until 2014. [Unemployment in the Netherlands is low: 5%; the average in the EU is 10%. In 2009 a total of 900 Bulgarian nationals and 3,300 Romanian nationals were working with a labor permit, two thirds in seasonal jobs in agriculture. This size and the impact of this group on the total Dutch labour force are extremely small.]

European Convention on Nationality

- The restriction of denaturalization in Article 7(d) of the convention to cases of serious damage to essential interests of the state has to be “re-interpreted” in order to allow for denaturalization in case of conviction for serious crimes generally. If the other Parties to the convention do not agree with this new broad interpretation, as of 1.1.2012 acquisition of Dutch nationality will become conditional only for the first five years. The nationality can be withdrawn during those years in case of conviction for a serious crime.

Integration policy

The relatively short paragraph in the coalition agreement on 'integration' states that the acquisition of Dutch nationality is the "crowning of participation and integration". The two main measures in that paragraph are:

- (1) no more payment from public funds for language and integration courses, and
- (2) making acquisition of Dutch nationality (by naturalization or option) more difficult and only conditional during the first years.

A personal note

Over the last ten years, in several EU Member State political parties with a clearly anti-immigrant program have received 10-15% of the votes in parliamentary elections. The reaction of the traditional parties to this result varied. In Belgium and Sweden the traditional parties refused to cooperate with such parties (the so-called "cordon sanitaire" in Belgium). In Denmark the minority government has regularly turned to the Danish Peoples Party for its votes in a order to obtain a majority for the budget or for legislative proposals, but it has looked for such support of the social-democratic party and other parties at other occasions. In the Netherlands the conservative VVD and the Christian-democratic CDA have negotiated on all elements of their recent coalition agreement with Geert Wilders and concluded a 20 pages agreement with him on his support for their government. Wilders is the leader and the only member of his own party (PVV). Those negotiations and this agreement have legitimated Wilders party and its politics and given him far more access to political power than similar parties in Belgium, Denmark and Sweden. A day after the coalition agreement was published, the Christian-democrat Minister of Justice Hirsch Ballin in a long interview stated that in the agreement "much effort was made to write down in decent words measures that have de-islamisation as their aim". De-islamisation is a word introduced by Wilders in the Dutch language. According to the Minister many proposed measures will require amendments of EU law. Support by other Member States thus is essential, but Wilders a few days ago voiced that Angela Merkel should not meddle in Dutch affairs. The minister predicts that those measures "will require time and energy, but they will not work. The real problems remain unsolved" (*NRC Handelsblad* 1.10.2010). Hirsch Ballin, who is the son of German refugees and has been a Minister of Justice for almost eight years, declared today that he will not serve as a minister in a government that depends on the votes of the Wilders party.

3.10.2010