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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the proposal for a Council decision on the establishment of a mutual information procedure concerning Member States' measures in the areas of asylum and immigration
(COM(2005)0480 – C6-0335/2005 – 2005/0204(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Patrick Gaubert

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision on the establishment of a mutual information procedure concerning Member States' measures in the areas of asylum and immigration (COM(2005)0480 – C6-0335/2005 – 2005/0204(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2005)0480)[1],

– having regard to Article 66 of the EC Treaty,

– having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0335/2005),

– having regard to Rule 51 and 41(4) of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
	Amendment 1 Recital 3 a (new)
	(3a) This new procedure should operate a two levels: on the one hand, via the web-based network, the Member States' administrations inform each other on the measures taken at national level in the areas of asylum and immigration; on the

[1] Not yet published in OJ.

other, the political authorities engage in regular debates at European level on those areas;

Justification

It is important not only to establish the exchange of information at the administrative level, but also to undertake a debate at the political level.

Amendment 2
Recital 4

(4) The information procedure should be based on solidarity, transparency and mutual confidence;	(4) The information procedure should be based on solidarity, transparency and mutual confidence***, and should result in a concerted and coordinated approach to the asylum and immigration policies of the Member States***;

Amendment 3
Recital 4a (new)

4a. The creation of this procedure should lead to the simplification, rationalisation and regrouping of the systems, structures and networks existing at Community level in the areas of asylum and immigration;

Justification

There already exist a considerable number of networks, and the aim of this new legislative instrument is not to add yet another network, but to better coordinate and rationalise those already in existence.

Amendment 4
Recital 5

(5) For reasons of efficiency and accessibility, a web-based network should be the essential element of the information procedure concerning national measures in the areas of asylum and immigration;	(5) For reasons of efficiency and accessibility, a web-based network ***managed by the Commission, which will guarantee its security and confidentiality,*** should be the essential element of the information procedure concerning national measures in the areas of asylum and

immigration;

Amendment 5
Recital 7

(7) Since the objectives of this Decision, namely secure information exchange and consultation between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects of the envisaged action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives;	(7) Since the objectives of this Decision, namely *to* secure information exchange ***and improve coordination*** and consultation between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects of the envisaged action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives;

Amendment 6
Article 1

This Decision establishes a procedure for the mutual exchange of information concerning national measures in the areas of asylum and immigration using a web-based network ***and allowing for an exchange of views on such measures***.	This Decision establishes a procedure for the mutual exchange of information concerning national measures in the areas of asylum and immigration using a web-based network***. This procedure will make it possible to prepare regular exchanges of views on measures liable to have a significant impact in several Member States or at Community level, not only at the administrative level but also at the political level, within the Council***.

Justification

It is important not only to establish the exchange of information at the administrative level, but also to undertake a debate at the political level.

Amendment 7
Article 2, paragraph 1

1. Member States shall communicate to the Commission and the other Member States the following measures which they intend to take in the areas of asylum and immigration if these measures are susceptible of having ***an*** impact on other Member States or on the Community as a whole:	1. Member States shall communicate to the Commission and the other Member States the following measures which they intend to take ***or have adopted*** in the areas of asylum and immigration if these measures are susceptible of having ***a significant*** impact on other Member States or on the Community as a whole:

Justification

These clarifications are important. A national measure should be transmitted to the Union as a whole if it is likely to have a major impact on other Member States' migration policies.

Amendment 8
Article 2, paragraph 1, subparagraph a (new)

	The information forwarded shall concern, in particular: recently adopted legislation, legislative texts under consideration, decisions taken by the competent administrative authorities, and case-law.

Justification

This list is offered in the interests of simplification and clarity. A degree of flexibility as regards deadlines is retained so as to ensure that Member States' forwarding of the necessary information is not left purely up to them.

Amendment 9
Article 2, paragraph 1, point (a)

(a) Draft legislation, at the latest at the time of submission for adoption; and	***Deleted***

Justification

See justification to Amendment 8.

Amendment 10
Article 2, paragraph 1, point (b)

(b) Draft international agreements, at the latest at the time when they are initialled.	***Deleted***

Justification

See justification to Amendment 8.

Amendment 11
Article 2, paragraph 1a (new)

	1a. Measures relating to legal immigration which are likely to have a significant impact in other Member States shall be communicated no later than the moment of their submission for adoption.

Justification

Significant measures relating to legal immigration, such as large-scale regularisations, should be communicated before or no later than the moment of their submission for adoption, since they can have an immediate impact on other Member States' policies.

Amendment 12
Article 2, paragraph 2, introductory sentence

2. Member States shall communicate to the Commission and the other Member States:	***Deleted***

Justification

See justification to Amendment 8.

Amendment 13
Article 2, paragraph 2, point (a)

(a) The final texts of the measures referred to in paragraph 1(a) at the time when they are adopted or	***Deleted***

immediately thereafter;

Justification

See justification to Amendment 8.

Amendment 14
Article 2, paragraph 2, point (b)

(b) The final texts of the measures referred to in paragraph 1(b) at the time when the Member State expresses its consent to be bound by such a measure or immediately thereafter.	***Deleted***

Justification

See justification to Amendment 8.

Amendment 15
Article 2, paragraph 3, introductory sentence

3. Member States shall communicate to the Commission and the other Member States the following decisions if they are susceptible of having an impact on other Member States or on the Community as a whole:	***Deleted***

Justification

See justification to Amendment 8.

Amendment 16
Article 2, paragraph 3, point (a)

(a) Final decisions of courts or tribunals which apply or interpret measures of national law in the areas of asylum or immigration, at the time when they are delivered or immediately thereafter; and	***Deleted***

Justification

See justification to Amendment 8.

Amendment 17
Article 2, paragraph 3, point (b)

(b) Administrative decisions in the areas of asylum and immigration, at the time when they are adopted or immediately thereafter.	***Deleted***

Justification

See justification to Amendment 8.

Amendment 18
Article 2, paragraph 4

4. The measures referred to in paragraph 1 and 2 ***and the decisions referred to in paragraph 3*** shall be communicated to the Commission and to the other Member States through the network referred to in Article 4 ("the network").	4. The measures referred to in *paragraphs* 1 and 2 shall be communicated to the Commission and to the other Member States through the network referred to in Article 4 ("the network").

Justification

Paragraphs 1 and 2 have been modified and paragraph 3 has been deleted, for a number of reasons including simplification.

Amendment 19
Article 2, paragraph 4a (new)

	(4a) Member States shall supply a twice-yearly report, in their respective official language(s) and following a model established by the Commission and including explanations and analyses of the most recent measures adopted at national level. This report shall be accessible on the web-based network referred to in Article 4.

Justification

The report should offer a clear summary explaining the most recent national measures and their likely impact at European level. This can then provide a basis to be discussed by the political authorities.

Amendment 20
Article 2, paragraph 5

5. The Commission or a Member State may request additional information concerning a particular measure or decision communicated by another Member State through the network. In such a case, the Member State concerned shall provide additional information ***concerning that measure or decision***, within ***two*** weeks of the request being made through the network. The additional information shall be made available to the Commission and the other Member States through the network.	5. The Commission or a Member State may request additional information concerning ***the report or*** a particular measure or decision communicated by another Member State through the network. In such a case, the Member State concerned shall provide additional information, within ***four*** weeks of the request being made through the network. The additional information shall be made available to the Commission and the other Member States through the network.

Justification

A two-week deadline is unrealistic and would not be met by the Member State.

Amendment 21
Article 2, paragraph 5a (new)

	(5a) Individual Member States and/or the Commission may request information on measures not communicated beforehand by a Member State, where they consider that those measures are liable to have an impact on domestic migration or on migration in the EU as a whole.

Justification

This possibility is important, as it permits Member States to verify among themselves whether the exchange of information is taking place in an objective, voluntary and effective fashion.

Amendment 22
Article 2, paragraph 6

6. Each Member State shall ensure that a summary of the ***text of every measure or decision*** it transmits through the network is available in an official language of the Community other than its own. This summary shall at least include the objectives and scope of the ***concerned measure or decision, its*** main provisions and an estimation of the impact ***it*** could have on other Member States or on the Community as a whole.	6. Each Member State shall ensure that a summary of the ***report*** it transmits ***twice-yearly*** through the network is available in an official language of the Community other than its own. This summary shall at least include the objectives and scope of the ***measures or decisions taken in the area of asylum or immigration, their*** main provisions and an estimation of the impact ***they*** could have on other Member States or on the Community as a whole.

Justification

A summary of the Member States' reports is more useful and comprehensible than setting out all the complex changes in the law of the 25. The summary must therefore be translated into a language other than that of the Member State concerned, it being understood that the Commission will draw up an abstract for the Council and Parliament, which will be translated into all the languages (Amendment 22).

Amendment 23
Article 4, paragraph 2

2. The Commission shall be responsible for the development and management of the network, including the structure and content of the network and access to it. The network shall include appropriate measures to guarantee ***its*** confidentiality.	2. The Commission shall be responsible for the development and management of the network, including the structure and content of the network and access to it. The network shall include appropriate measures to guarantee ***the*** confidentiality ***of all the information concerned***.

Amendment 24
Article 4, paragraph 3a (new)

	(3a) When instituting the mutual information procedure, Member States shall supply data concerning the state of play as regards their national law, thus creating a basic 'database'.

Justification

Information on the state of play as regards national law in each Member State in the areas of asylum and immigration should be available as soon as the mutual information procedure is instituted. This will improve the analysis of changes communicated later.

Amendment 25
Article 4, paragraph 4a (new)

(4a) The network shall have a specific function enabling Member States to send out calls for information of a specific nature addressed to one or more Member States and/or the Commission, in the areas concerned by this decision.

Amendment 26
Article 4, paragraph 4b (new)

(4b) The network shall have a specific function enabling the machine translation of on-line information into all the official languages, or, at least, the most widely used ones, thus improving the comprehension of documents.

Justification

The available information should be translated into as many official languages as possible in order to be readable and comprehensible for all Member States. The Commission should therefore ensure that the new network offers a machine translation function.

Amendment 27
Article 4, paragraph 5a (new)

(5a) A secure access point for the network shall be created at the European Parliament for the use of Members.

Justification

The European Parliament, as co-legislator on asylum issues and a part of immigration policy, should ensure its Members access to the web-based network.

Amendment 28
Article 5, paragraph 1

1. The Commission ***may, on its initiative or on demand of a Member State, organise an exchange of views with Member States' experts on a particular national measure submitted under articles 2 and 3 of this Decision. The Member State whose measure is the object of discussion shall be represented at the exchange of views***.	1. The Commission ***shall draw up a twice-yearly report summarising the contents of the reports forwarded by the Member States. In preparing its report, the Commission may undertake additional consultations with the Member States. This report shall be forwarded to the European Parliament and the relevant services of the Council with a view to providing the political authorities with a basis for their exchanges of views***.

Justification

Exchanges of views already take place on the administrative level, within the numerous existing structures and working groups. The existing information needs, then, to be relayed at the political level. The Commission's general report should be translated into all the Union's official languages, prior to being updated in Council and forwarded to Parliament.

Amendment 29
Article 5, paragraph 2

2. The purpose of the exchange of views shall be the identification of issues of common interest.	***Deleted***

Justification

This paragraph adds no important or essential information.

Amendment 30
Article 6, paragraph 1

The Commission shall evaluate the functioning of the system ***3*** years after the entry into force of this Decision and regularly thereafter.	The Commission shall evaluate the functioning of the system ***2*** years after the entry into force of this Decision and regularly thereafter.

Justification

This new procedure should be evaluated after two years, a time-limit which should suffice to determine the value added it supplies and its utility.

EXPLANATORY STATEMENT

I. Context:

On 11 February 2005, the Luxembourg presidency and Commissioner Frattini wrote to the Justice and Home Affairs Ministers asking them whether they favoured setting up an EU mutual information and early warning system for asylum and immigration. In April 2005, at the Justice and Home Affairs Council, the Member States welcomed this initiative and asked the Commission to submit a formal legislative proposal.

This project was conceived and offered for debate at the moment when Spain was preparing to launch its massive regularisation operation. Certain Member States then claimed - rightly or wrongly - that they had not been informed of this measure, and expressed their concern at the consequences of this decision for their own migration flows.

In order to avoid such tensions in the future and better coordinate the asylum and immigration policies of the 25, the Commission, on 11 October 2005, submitted the present proposal for a Council decision.

II. Substance of the Commission proposal:

The information procedure is based on the principles of solidarity, transparency and mutual trust. Each Member State shall forward, to the others and to the Commission, all texts containing the national measures it intends to take in the fields of asylum and immigration, where they are likely to have an impact on another Member State or on the EU in general.

A summary of these texts must be forwarded in an official EU language other than that of the Member State concerned. Each Member State may decide freely on the language of this summary.

The information shall be forwarded by means of a secure Internet-type network managed by the Commission, which guarantees its confidentiality. This trans-European technical platform will facilitate the existence of telematic networks for data exchange between European administrations, as is currently also the case for other EU policies.

In addition, any Member State or the Commission may ask for information on a measure of which it has been previously notified via the network. The Commission proposes a deadline for reply in such cases of 2 weeks.

Exchanges of views may also be held on the request of a Member State or the Commission.

III. Rapporteur's general position:

For this Commission proposal, Parliament's role is one of consultation alone. The exchange of information concerns asylum and legal and illegal immigration. Parliament is the co-legislator in two of those fields, and your rapporteur therefore does not understand the choice of legal basis. The Legal Service has been asked for its opinion.
Regarding the proposal's content, your rapporteur has at all moments advocated a better

coordination of asylum and immigration policies within the Union. He thus welcomes the Commission's idea of proposing a mutual information procedure.

Since the Treaty of Amsterdam, numerous measures have been taken in the areas of asylum and immigration at European level. Nonetheless, the Member States have kept significant powers, and the policies of each have a major impact on migration movements in the others.

It is therefore vital to proceed to the rapid improvement of the coordination of those national policies, and to strengthen coordination and mutual trust between Member States. It will no longer be possible for Member States to take decisions without informing their neighbours in the border-free Schengen area.

For all these reasons, the Commission proposal is a step in the right direction. Your rapporteur nonetheless believes that this mutual information procedure lacks the necessary political phase.

The Commission proposes linking up the national administrations for the purpose of exchanging information on the measures taken in each Member State. The Internet-type network will facilitate their exchanges and will simplify the procedures.

It may be recalled that numerous working groups exist in the areas of asylum and immigration at European level, e.g. the CIREFI[1] for illegal immigration, EURASIL, the European Migration Network, etc.

The information is, then, already available at administration level, but remains much too dispersed. The new procedure will thus serve as a global link on asylum and immigration - something which is clearly desirable.

Your rapporteur wishes, however, to go even further and propose another - and equally important - phase for this procedure of exchange of information: namely, a political phase. Joint political action at European level is vital in these fields, and needs to be stepped up. There need to be more regular discussions and debates between political leaders.

Your rapporteur therefore proposes a full system of information exchange at two levels: first administrative, then political.

IV. Your rapporteur's concrete proposals:

- Exchange of information between national administrations:

With the new system, Member States will inform the Commission and the other Member States of their new measures adopted in the areas of asylum and immigration, where they are likely to have a significant impact in other Member States or at Community level.

[1] CIREFI = Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration

The information transmitted via the network will concern recent legislation, legislative texts under consideration and case-law (forwarded with the names of the individuals or Member States concerned deleted). Your rapporteur favours simplifying the over-detailed list proposed by the Commission, which would, he feels, be too easy for Member States to get round.

However, measures relating to legal immigration should be communicated before they are submitted for adoption, or at least no later than that date. This is needed because such measures have an immediate effect on other Member States' migration policies.

It is also essential that all Member States should supply, at the moment of creation of this new system, information on their present national legislative state of play. This information will form what may be termed a 'database'.

In addition, the Commission will create a specific function on its network offering machine translation into all the official languages or, at least, the most-used languages, in order to facilitate comprehension of the documents.

The exchange of information should be carried out in an objective and voluntary fashion based on mutual trust. However, where a national measure has not been communicated within the proper deadline, another Member State or the Commission may ask the Member State concerned for information on it. Your rapporteur has decided to add this option so that Member States can keep checks on each other where the exchange of information is not properly carried out.

- Exchange of information at political level:

To complement the exchanges at administrative level, your rapporteur proposes that each Member State should submit a twice-yearly report explaining and analysing the most recent national measures and their likely impact at EU level. These reports would be available on the network and would serve as a basis for the discussions among the political authorities. The other Member States and the Commission could ask for information additional to this political orientation text. The deadline for forwarding the additional information would be four weeks.

Your rapporteur considers it is vital to supply information that is clear, readable and comprehensible on the decisions taken at national level. Explanatory reports of this nature are more suitable for political debate than legislative texts in the original language, which tend to be complex.

The Commission would then prepare a general document summarising the information contained in the Member States' reports. This would be translated into all the official languages and entered as an item for debate on the Council's agenda.

Thus, the political authorities would debate the most recent measures taken or proposed by each Member State in the fields of asylum and immigration. Exchanges of views at this level are essential if we are to improve the coordination of migration policies in the Union.

As a key political player, the European Parliament must also be involved in this procedure. Your rapporteur therefore proposes that there should be an access point to the network for MEPs. They could thus access the 'database' and could obtain recent information on the policies introduced in each Member State.