

COMMISSION OF THE EUROPEAN COMMUNITIES

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***Annex to 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

IMPACT ASSESSMENT

{COM(2005) 480 final}

1. What issue/problem is the policy/proposal expected to tackle?

Since the entry into force of the Treaty of Amsterdam, a large number of common measures have been adopted in the areas of asylum and immigration, as the Community and the Member States share the competence to legislate in those areas. Nevertheless, Member States keep an important role in this area and are continually adopting new national measures, which may in some cases have an impact on other Member States or on the Community as a whole.

Indeed, the absence of border checks in the Schengen area, the common visa policy, the tight economic and social relations between EU Member States and the development of common immigration and asylum policies in recent years have had as an indirect consequence that asylum and immigration measures taken by one Member State are more likely to have an impact on other Member States. For instance, a very restrictive migratory policy in one Member State may deviate migration flows to its neighbours; and a regularisation procedure may attract illegal immigration into one Member State, from which regularised migrants could afterwards more easily move to other Member States. Other national asylum and immigration measures, including, among others, changes in procedures for granting international protection, determination of safe countries of origin, admission programmes for third country nationals (including quotas), and integration measures may also have an impact on other Member States or on the Community as a whole.

A parallel and harmonious development of national and Community asylum and immigration policies is therefore needed. In this sense, it is essential that Member States and the Commission be kept informed of important new measures taken by every Member State. Otherwise, if no action towards better information and coordination is taken, the risk exists that the development of divergent and even contradictory national policies will undermine the efforts to build common EU asylum and immigration policies.

2. What main objective is the policy/proposal expected to reach?

The issues mentioned above fully justify the establishment of a formal information procedure between Member States and with the Commission which will increase the possibilities for information exchange on and discussion of national measures in the areas of asylum and immigration.

Member States will benefit from an information procedure, as they will be able to obtain a better knowledge of other Member States' policies and will be in a position to improve coordination, and therefore avoiding recriminations between Member States for the lack of information on measures potentially having an impact on them. Member States could have the possibility to know other Member States' views, if an exchange of views takes place on a given draft national measure, before the latter becomes adopted legislation. Finally, the negotiation of new EU legislation will also be enhanced, as a result of better coordination of national policies and increased mutual

knowledge and confidence.

The proposed mutual information procedure must be viewed in the wider framework of the cooperation and information mechanisms and structures between the Member States and the Commission. The Commission wishes to simplify and merge existing systems, structures and networks at Community level in order not to increase the administrative burden on Member States.

3. What are the main policy options available to reach the objective and what are the impacts –positive and negative- expected from them?

Available policy options

Option 1

The minimalist option would consist in maintaining the current situation, in which Member States and the Commission are often informed of important measures taken by other Member States in the area of asylum and immigration through the media.

Option 2

An intermediate option is to establish an information procedure which encourages Member States to inform other Member States and the Commission of their national measures, but which has no compulsory character and relies on the goodwill of Member States.

Option 3

A more advanced option would consist in establishing an obligation to inform other Member States and the Commission of planned measures, but only from the moment they are in the public domain, thus avoiding the communication of confidential/non-public information.

Option 4

A maximalist option would include the compulsory communication of planned measures being still considered internally by governments, therefore including information which is not in the public domain.

Options 2, 3 and 4 could include, besides the obligation to communicate measures through the network, the possibility for the Commission or a Member State to ask for an exchange of views concerning a particular national measure communicated through the network. It would serve as the forum for other Member States to express their views during an oral discussion on the concerned national measure.

Equally, these 3 options could include the communication and discussion, not only of

general legislative measures, but also of certain administrative and judicial decisions susceptible of having an impact on other Member States or on the Community as a whole.

Impact of the options

Option 1

Given the ongoing development of common European asylum and immigration policies and the impact that a national measure may have on other Member States or on the Union as a whole, more cooperation and improved mutual information on national asylum and immigration measures is needed. Keeping the current state of things (information through the media or, in the best of cases, through informal channels) cannot be considered an optimal choice. In a common area of freedom, security and justice it is essential that all Member States are informed as early as possible of measures taken by other Member States which could affect them. Moreover, some Member States could have more information than others due to their special relationship with the Member State adopting a particular measure, and so would have an advantage above Member States which would not have direct access to the information.

Option 2

The establishment of a non compulsory system would be a positive step but there would be a risk that Member States would not feel bound by it and would not communicate their national measures through it. The experience acquired with the 1988 Commission Decision shows that a formal obligation established by a Council legal instrument is more likely to have a real impact.

Option 3

This goes further than mere communication through the press, as the communication will require certain formal requirements and be compulsory, without undermining the necessary degree of confidentiality during the early stages of policy-making. This option would not require a high degree of security requirements for the web-based network, as the information channelled through it would normally be in the public domain.

Option 4

This option would have the advantage of allowing input from other Member States and consideration of their views at an early stage. On the other hand, such an 'early warning' mechanism could disrupt the normal legislative procedure and pose problems of confidentiality and security. The network would need to be highly secure to handle this kind of confidential information. Member States and the Commission would be able to express their views on a text which is still subject to many changes and modifications as it is still being the object of internal discussions.

Financially, the proposed measure is expected to have no cost at all if option 1 is chosen and a rather limited cost if the choice falls on options 2 and 3. This is due to the use of a web-based system which would allow sharing the information at no additional

cost. The use of the web as a means for communicating seems preferable to a system based on communication through faxes or letters, in terms of efficiency, cost and speed. Option 4 would be more expensive as it would require an extreme securitisation of the network.

The costs of travelling related to the meetings linked to exchange of views would be supported by the Commission budget. The Commission would however need additional human resources to carry out the maintenance of the web-based system and the secretarial tasks for the exchange of views meetings. See legislative financial statement for detailed information on the estimated cost of the measure.

4. How to monitor and evaluate the results and impacts of the proposal after implementation?

In order to monitor if the mutual information procedure is effectively followed by Member States and how it affects national and community policy-making, it is proposed that the Commission undertake a review on the application of the Council Decision three years after its entry into force, and periodically thereafter. This would allow the Commission to propose future improvements if the procedure does not attain its objective of improving coordination and mutual information between national administrations responsible for asylum and immigration issues.

5. Stakeholder consultation

A first informal discussion on the establishment of a prior information and consultation system took place during the JHA Council of 24 February 2005. Most Member States reacted positively to the joint Presidency/Commission proposals to set up such a system. An ad hoc meeting of Member State's experts took place in Brussels on 17 March 2005 to discuss a non-paper prepared by the Commission services which contained the main elements of the proposed system. 23 Member States were represented at the meeting. Member States were also requested to provide their written comments. 3 Member States have provided such comments.

Most Member States have expressed support for the establishment of such a system and none has expressed its opposition. During the discussions on 17 March, it was repeatedly requested that the system should avoid duplicating efforts and should use existing structures rather than creating new ones. The Commission has made efforts to take into account the Member States' needs and concerns, including a clear definition of the obligation to be fulfilled and the translation issue (there is an obligation to translate a summary of the measure/decision in another EU language, but Member States are free to choose the language of the translation).

The Council adopted on 14 April 2005 conclusions on the establishment of a "System of mutual information between those in charge of migration and asylum policy in the Member States", in which the Council invited the Commission "to submit to the Council a proposal for the establishment of a system of mutual information between those in charge of migration and asylum policy in the Member States, based on the

necessity to communicate information on measures considered likely to have a significant impact on several Member States or on the EU as a whole and allowing for an exchange of views between Member States and the Commission at the request of either one of them". The Council conclusions back the relevance and need of the current proposal.

6. Commission draft proposal and justification

The preferred option is a system which makes compulsory the sharing of information on planned national measures in the areas of asylum and immigration from the moment they are made public (close to option 3 above).

Concerning the structure of the information procedure, it is proposed to set up a two-step mechanism: the first step concerns the transmission of the information on planned national measures through a web-based network run by the Commission. In order to lessen administrative burden for the Member States, this web-based network will be used as well for the transmission to the Commission of the information required under any directive containing an obligation to inform the Commission of national measures taken in a particular area related to asylum and immigration. It is important to note that the web-based system will not serve as a documentation centre, as this role is to be played by other structures, like the European Migration Network database.

The second step concerns the holding of an exchange of views, requested by at least one Member State or the Commission, on a particular national measure. The purpose of such an exchange of views is to facilitate the mutual exchange of information and the identification of problems of common interest; therefore, discussions will not lead to any voting nor will they result in any kind of recommendations to the Member State concerned.

Such a two-step mechanism has the advantage of keeping Member States informed of what other Member States do while avoiding holding a large number of meetings (as it is expected that most measures transmitted through the web-based system will not necessarily lead to an exchange of views). At the same time, it provides for the possibility of personal contacts between Member States representatives when necessary and of ad-hoc presentations of the measures to other Member States representatives, which will complete the information transmitted through the web.

It is proposed that the system covers not only general legislative measures, but also certain judicial and administrative decisions which may be relevant in the area of asylum and immigration. For all the measures to be communicated, the requirement of them being 'susceptible of having an impact on other Member States or on the Community as a whole' is the element which determines whether they must be communicated or not. Without such a requirement, the system would very quickly become bogged down.