Asylum and immigration policy: mutual information procedure concerning Member States measures in these areas

2005/0204(CNS) - 10/10/2005 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's initial 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) .

1- POLICY OPTIONS AND IMPACTS

Four policy options were explored in relation to the establishment of a mutual information procedure concerning Member States' measures in the areas of asylum and immigration.

1.1- Option 1 - maintaining the status quo: 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.

1.2- Option 2 – establishment ofan 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.

1.3- Option 3 – establishing an obligation to inform other Member States and the Commission of planned measures. This would only applyfrom the moment they are in the public domain, thus avoiding the communication of confidential/non-public information.

1.4- Option 4 - 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.

CONCLUSION: 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*** (option 3).

IMPACT

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.

2- FOLLOW-UP

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.