EUROPEAN COMMISSION

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REPORT FROM THE COMMISSION

pursuant to Article 4 and Article 5 of the Council Decision of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration

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1. INTRODUCTION

In conclusions adopted at its meeting of 14 April 2005, the Justice and Home Affairs Council called for the establishment of a system of mutual information between those in charge of migration and asylum policy in the Member States. Following this request the Commission presented in October 2005 a proposal for a Council Decision on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration[1]. The Decision (2006/688/EC) was adopted by the Council on 5 October 2006[2].

The Decision establishes a system for secure information exchange and consultation between Member States on national measures which they intend to take, or have recently taken, where these measures are publicly available, and are likely to have a significant impact on several Member States or on the European Union as a whole.

Article 4 of the Decision foresees that the Commission shall, once a year, prepare a general report summarizing the most relevant information transmitted by the Member States. This general report shall be transmitted to the European Parliament and to the Council and shall constitute the basis for a debate on national asylum and immigration policies at ministerial level.

Article 5 provides that the Commission shall evaluate the functioning of the mechanism two years after its entry into force and regularly thereafter. It may also, if appropriate, propose amendments.

Given the parallel lapse of the two-year period for the evaluation of the functioning of the mechanism, the Commission considers it fit to merge the reporting (Article 4) and evaluation (Article 5) tasks into a single document. This will permit the presentation of a comprehensive record of the first operational period of the mutual information mechanism (MIM).

2. ACTIVITIES

The Decision entered into force on 4 November 2006. The mechanism itself became operational in April 2007. In line with Article 3 of the Decision, the Commission established a special interest group on the platform of the web-based CIRCA (Communication & Information Resource Centre Administrator) network and gave access to national contact points designated by Member States.

By the end of September 2008 all Member States had designated their national contact points. Access had been given to around 60 national experts, while the number of access demanded by Member States varies between one and five per Member State.

To support the national contact points and to make the experts familiar with the network, the Commission organised in February 2007 a CIRCA training followed by an additional training session in a workshop in December 2007. The latter also provided a forum for a preliminary analysis of the first six months since the system had become operational. A third workshop, focussing on the possible content of this report, was held in April 2008.

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1 COM(2005) 480 final.

2 OJ L 283/40, 14.10.2006

In parallel the Commission informed Member States in the Committee on Immigration and Asylum about the most relevant information transmitted by Member States. On the basis of a questionnaire, the Committee discussed ways to improve the use of the mechanism. At its meeting of 8 June 2009, the Committee was also informed about the preparation of the report and the evaluation. The purely factual part of the report was circulated to the MIM contact points with the purpose of its verification.

3. GENERAL OVERVIEW

Since April 2007 until 30 September 2009, 16 Member States transmitted information via the MIM. The information covered 45 different measures. Almost 50% of the communication (21) referred to adopted legislation, while only 4 communications concerned draft legislation. Altogether 9 communications were provided by 5 Member States on policy intentions and long-term programming. 11 Member States have not provided any information (see Annex). While there were certain periods of increased intensity of exchange of information, only four communications have been made within MIM in 2009.

The format of the communicated information was not always homogenous. According to Article 2(2) of the Decision, the information shall be communicated using the reporting form annexed to the Decision and whenever possible adding the Internet link to the whole text. However, in certain cases Member States did not use the form and limited themselves to transmitting a raw text of the measure in question. This may have rendered the effective reception of the information more difficult, taking into account that the interested Member States were not able to identify instantly the gist of the measure or its possible impact. Differences in the contents of the completed forms are also discernible. While certain forms include a fairly comprehensive (but still concise) contribution, others are confined only to a cursory description, which may not give an idea of the nature of the measure.

Furthermore, in some instances only the English title of the measure in question was indicated, while no form was provided at all, with the text being only communicated in the original language. This may have created a risk of the incomprehension of the information. It needs to be recalled that according to the Annex of the Decision the Member States shall translate the full name of the measure, its short description as well as their comments and observations into an official language of the Institutions of the European Union other than its own.

4. INFORMATION TRANSMITTED

Policy intentions and long-term programming

On 20 April 2007 the **United Kingdom** sent two documents adopted by the Home Office in March 2007: "Securing the UK **Border** – Our vision and strategy for the future" and "Enforcing the Rules – A strategy to ensure and enforce compliance with our **immigration laws**". These documents set out the new approach of the British authorities concerning border policy and enforcement of immigration rules.

On 25 June 2007 **Spain** informed of the "Strategic Plan for **Citizenship and Integration**" which explains the Spanish approach to Integration in the years 2007-2010.

On 17 April 2008 **Romania** informed about the Government Decision for the approval of the **National Immigration Strategy** for 2007 – 2010.

On 13 April 2007 **the Netherlands** informed about its intention to adopt a **Policy regulation to settle the inheritance of the former Aliens Act**.

The Netherlands also informed on 1 August 2008 about a letter from the Minister and Deputy Minister of Justice to the President of the Parliament on the Analysis of the **application of Article 1F of the 1951 Convention relating to the Status of Refugees**. The letter of 9 June 2008 contains conclusions of an evaluation of the Dutch policy on Article 1F of the 1951 Convention.

Furthermore **the Netherlands** shared on 29 September 2008 with Member States the **"Blueprint for Modern Migration Policy"**. The Blueprint had been presented to the Dutch Parliament on 27 June 2008 and contains the Dutch Cabinet's **proposal for the admission and residence of foreign nationals** who wish to reside in the Netherlands.

Finally, **the Netherlands** informed on 12 February 2009 about the adoption of the document **"Achieving a more effective asylum procedure and a more effective return policy"**. This document outlines the Cabinet's plans for a more meticulous and more rapid asylum procedure, which will also promote the return of refused asylum seekers.

On 9 December 2008 **Sweden** informed about the adoption of the **International Strategy of the Swedish Migration Board**. The document is a comprehensive, agency-wide International Strategy adopted by the Director General in June 2008.

Draft legislation

More information concerning regularisation of asylum-seekers in **the Netherlands** (indicated previously under policy intentions) followed on 7 May and 5 June 2007. Under the regulation foreign nationals, who have submitted an application for asylum before 1 April 2001 and have lived uninterruptedly in the Netherlands since 1 April 2001, would be granted *ex officio* a residence permit. A permit would not be granted under the regulation to foreign nationals who constitute a danger to public order or national security. Foreign nationals, who have declared false identities or nationalities in various procedures and whose identities or nationalities have been established as false, would not be granted a permit under this regulation either.

On 3 May 2007, **Italy** informed about a draft law amending the **regulations for immigration** and conditions for foreigners, which includes, among others, a preferential channel for **highly specialized workers** (in the field of research, science, culture, art, management, show business, sport) for granting rapidly a stay permit for maximum 5 years as well as **measures for an effective return policy.**

On 8 November 2007 **Italy** reported on the Act of the Senate No 1201 concerning draft legislation on the interventions on the fight against the exploitation of **irregular employees** which aimed to reinforce the protection of the migrant workers and strengthen **employers' sanctions.**

On 17 June 2008 the **Czech Republic** informed about a proposal on **legal migration** introducing a **"Green Card"**, which was due to enter into force in the middle of 2009. The "Green Card" was intended to be a document unifying a work permit and residential permit

for the territory of the Czech Republic and serve as a long-term residence permit for the purpose of employment in special cases.

Adopted legislation

On 8 March 2007 the **Slovak Republic** informed about the changes in the new **asylum law**, which incorporates the concept of subsidiary protection. On 31 January 2008 the Slovak Republic informed about **further amendments** of the asylum law.

On 2 July 2007 **Hungary** informed about the new **immigration legislation** of Hungary ("Act II of 2007 on the Entry and Stay of Third-Country Nationals"). The new legislation, which entered into force on 1 July 2007, mainly serves the purpose of harmonization with relevant EU legal instruments, most notably the Schengen Acquis.

On the same date **Hungary** informed about the new "Act LXXX of 2007 on **Asylum**" that was adopted on the 25 June 2007 and entered into force on 1 January 2008. The new legislation mainly serves the purpose of compliance with relevant EC directives (Qualification Directive, Procedures Directive, and Reception Directive) and introduces inter alia the concept of subsidiary protection into Hungarian legislation. An English version of the new law had been submitted on 21 December 2007.

Finally, on 18 August 2009, Hungary provided the text of Government Decree 113/2007 and 114/2007 on the Implementation of Act I of 2007 **on the Admission and Residence of Persons with the Right of Free Movement and Residence** which implement the Free Movement Act having entered into force on 1 January 2007.

On 6 July 2007 **Malta** informed about new legislation which implements in national law Directive 2003/86/EC on the **right to family reunification** for third-country nationals.

On the same date **Poland** informed about an Ordinance of 27 June 2007 of the Minister of Labour and Social Policy amending the ordinance on work of foreigners without the need of **possession of work permit**. It was expected that the new rules will both promote **legal employment** of aliens and respond to shortages of work force noticed especially in agriculture and construction. The Ordinance entered into force on 5 July 2007.

In addition **Poland** informed on 31 January 2008 about a further amendment of the ordinance on work of foreigners without the need of possession a work permit. The initial time period (up to 3 months) was extended to a maximum period of 6 months during a period of 12 months. The Ordinance entered into force on 1 February 2008.

Finally **Poland** informed on 20 July 2007 about Act of 24 May 2007 amending the Act on Aliens (and some other acts). This Act aimed to implement Directive 2005/71/EC and Directive 2004/114/EC Moreover, the amendment includes an **abolition instrument (regularization) for aliens residing illegally** on the territory of the Republic of Poland continuously at least since the 1 January 1997, who until 6 months from the day of entry of this Act into force submit an application for residence permit for a fixed period of 1 year. The Act entered into force on 20 July 2007.

On 27 September 2007 **Germany** informed about new legislation amending German **immigration law**. The main purpose of this act was the implementation of eleven Directives. Furthermore, the Residence Act, which took effect on 1 January 2005, has been amended to combat bogus and forced marriages; to step up internal security; to promote the integration of

foreigners (including a tolerated stay for certain categories of third-country nationals), and to make it easier for those wishing to start a business to come to Germany.

Portugal informed on 6 November 2007 about new legislation (Act 23/2007 of 4 July 2007 and Decree Reg. 84/2007 of 5 November 2007) which approves the **legal framework of entry, exit, stay and removal of foreigners** into and out of the national territory. With this law Portugal transposed several Directives, in particular on legal migration, into national law.

On 12 March 2008 **Slovenia** informed about the "International Protection Act (IPA)" which entered into force on 1 January 2008. With the IPA Slovenia transposed the **Asylum Directives** into national law. Outside the obligations set out in the Directives, the Act introduces a new chapter on **permanent resettlement** based on quotas.

On 8 April 2008 the **Czech Republic** informed about the amendment of the Act No. 326/1999 Coll. on the Residence of Aliens on the Territory of the Czech Republic which entered into force on 21 December 2007. The Act on the Residence of Aliens in the Territory of the Czech Republic is the basic legislative instrument which contains legal provisions for the arrangement of **rights and obligations of aliens legally residing** in the territory of the Czech Republic and those who are entering the territory, arrangement of visas, expulsion etc. The main amendments concern the transposition of Directive 2005/71/EC and of Directive 2001/51/EC, the obligation of aliens applying for a visa to allow their fingerprints to be taken together with pictures, the introduction of the condition to prove Czech language skills as a necessary requirement for the application for a permanent residence permit and the new regulations concerning fraudulent acts whose objective is to obtain approval for residence in the Czech Republic - "purpose marriages".

Also on 8 April 2008 **Sweden** informed about the amendment of the **Swedish Aliens Act** and the **Aliens Ordinance** which already entered into force early 2006. The Aliens Act contains inter alia measures on conditions on which an alien may enter, stay and work in Sweden, visas, right of residence, refugees and persons otherwise in need of protection, long-term residence status in Sweden for third-country nationals, detention, enforcement of refusal of entry and expulsion orders, appeal procedures, public counsel and temporary protection. The **Aliens Ordinance** contains provisions on travel documents, visas, right of residence, residence permits, work permits, controls and coercive measures, the duty to provide information and refusal of entry, expulsion, etc.

Austria communicated on 16 April 2008 the text of the Federal Act concerning settlement and residence in Austria (the **Settlement and Residence Act** – SRA) and the Federal Act Concerning the Granting of Asylum (2005 **Asylum Act**). Both entered into force on the 1 January 2006.

On 13 August 2009 **Austria** communicated the text of **the Amendments to the Asylum, Settlement and Residence Act, Foreign Policy Act** of 1 April 2009.

On 10 May 2007 **Greece** informed about a **regularization procedure** for specific categories of third-country nationals. Article 18, par. 4 of law 3536/2007 provides for a regularization procedure concerning specific categories of third-country nationals who used to live in Greece until 31 December 2004 and who have been living in Greece ever since, provided that they do not constitute a threat to public order and public security. The persons concerned shall provide specific evidence to document their residence in Greece. Spouses and minor children of the said nationals are independently subject to the regulations.

On 15 May 2008 **Greece** informed – by referring to Article 2 paragraph 4 of the Council Decision – about the Presidential Decree No. 106/2007 concerning the transposition of the Directive 2004/38/EC. On the same date, the information was provided about the Joint Ministerial Decision no. 16928/17-8-07 on the **certification of knowledge of Greek language** as well as elements of the Greek history and culture for third-country nationals who wish to apply for **long-term resident status**, amended by Joint Ministerial Decision no 999/03-3-08.

Spain informed on 23 September 2008 about new legislation concerning the **support of voluntary return** of unemployed third-country nationals to their countries of origin. The measure, adopted by Government Decree 4/2008 of 19 September 2008, creates the possibility of paying in two instalments the contributory unemployment allowances to third-country national unemployed workers, who are in legal situation in Spain, and decide to go back voluntarily to their countries of origin. The general rule is that the workers must be nationals from third countries with which Spain has signed bilateral agreements on social security.

Final decisions of the highest courts or tribunals

No information was submitted.

Administrative decisions affecting a large group of third-country nationals or having a general nature

On 3 May 2007, **Italy** informed about the adoption of a Directive by the Minister of the Interior and the Minister for Family policies on the **residence of foreign minors** and a Circular on the issue of residence **permit to non- EU amateur sportsmen**.

In addition, **Italy** submitted on 6 December 2007 information about a Decision taken by the Minister of the Interior concerning **residence permits issued for the social protection** of immigrants who face exploitative working conditions.

Spain informed on 25 June 2007 about a **ministerial order measuring economic means for foreigners** to enter Spain and a second ministerial order regulating **invitation letters from individuals inviting foreigners to enter Spain for private or tourist purposes**.

Moreover, **Spain** communicated on 2 August 2007 instructions determining the **procedure of managing applications of third-country nationals, enrolled in Spanish ships**, to obtain permits to live and work in Spain.

Finally **Spain** informed on 17 January 2008 about a Decision of the Spanish Council of Ministers, of 21 December 2007, regulating the **quota of foreign non-Community workers** in Spain for the year 2008.

Other

On 2 November 2007 the **Netherlands** informed about a Decision of the Administrative Law Division of the Council of State to **request the European Court of Justice to give a preliminary ruling** on questions related to the scope of Article 15 (opening lines) and (c) of Directive 2004/83/EC.

Sweden informed on 22 July 2008 about Guidelines from the Director General of the Swedish Migration Board (adopted in May 2008) on the **application of the Dublin Regulation** with respect to Greece.

The **Netherlands** shared with Member States on 2 October 2008 policy decisions in the field of **asylum** which had been taken with regard to **specific countries of origin**. The decisions concern the use of country information for the assessment of asylum applications in the Netherlands. On 14 August 2009 it provided **the new annex** to this document.

5. EVALUATION

Member States and the Commission[3] have underlined that 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 have as a consequence that national immigration policies clearly have an impact beyond national borders. Actions taken in one Member State for national or regional reasons can rapidly have an impact on another Member State. In this light, the systematic exchange of information allows to obtain a better knowledge of other Member States' policies, to improve coordination between them, to influence the quality of new EU legislation and, finally, to increase mutual knowledge and confidence.

It can be concluded that the practical experience of the functioning of the MIM did not meet these expectations. Even if the quantity of information provided may not be a sole factor of assessment, it is apparent that its scale of application must be deemed insufficient. Although, according to Art. 2(1) of the Decision, it is for each Member State to evaluate whether its national measures are likely to have a significant impact on several Member States or on the EU as a whole, it is surprising to see that only a small proportion of measures were judged as falling under this category. Moreover, a relatively considerable number of Member States have never communicated any measure through the MIM (BE, BU, CY, DK, EE, FI, FR, IE, LV, LT, LU).

The weakening dynamics of the exchange of information within the MIM is also evident even though the Commission has on numerous occasions encouraged Member States to use the system. It is unclear why the MIM has been employed in the recent period so rarely, even though Member States have remained active in their internal policies on immigration and asylum. The Commission notes that at the same time inquiries have been made about potentially far-reaching measures discussed or adopted in other Member States, since they had not been communicated within the MIM. This demonstrates that the absence of information may indeed stand in the way of building the mutual trust necessary for the effective cooperation in the area of immigration and asylum.

A particular concern may be expressed with regard to the communication of measures before their adoption. Only 4 pieces of draft legislation and 9 measures concerning policy intentions or long-term programming have been provided. The poor level of activity at this stage of a decision-making process surely does not contribute to an exchange of views helping to form a more coordinated approach of national policies.

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[3] See for example: the Commission Communication Towards a Common Immigration Policy, COM(2007) 780 final.

The Commission recalls that the aim of the MIM was to provide a flexible, rapid and non-bureaucratic channel of exchange of information, subject to confidentiality and data protection requirements. This constitutes an added value compared to other existing fora and mechanisms within EU, as they may not always give an opportunity to ensure a transfer of information in "real time" and on ad-hoc basis, in the event such a necessity arises.

6. CONCLUSIONS

Strengthening information sharing and joint discussion within the EU is a way to ensure a high level of political and operational solidarity in the common immigration and asylum policy. National measures taken in isolation may weaken European cohesion and trust[4].

The need to foster the exchange of information in this field has also been stressed in the European Pact on Immigration and Asylum, where it was agreed to strengthen mutual information on migration by improving existing instruments where necessary[5].

In its Communication issued in view of the Stockholm Programme[6], the Commission also indicated that the exchange of information between Member States concerning regularisations should be improved.

Consequently, the Commission is of the view that effective communication must remain a crucial component of further development of the EU policies on immigration and asylum, where the need for the exchange of information will only be enhanced. In the way the MIM currently functions, it does not seem, however, to attain in itself this objective.

Given the relatively short period of functioning of MIM, the Commission does not also consider it relevant to propose amendments to the Decision, according to its Article 5. There is no evidence that the reasons of the unsatisfactory application of the Decision lie in the frame of its provisions. It can also be concluded, from the workshops mentioned above, that the use of the CIRCA network did not create substantial technical problems.

In future, the Commission considers it desirable to streamline the functioning of the MIM into a more general framework. A suitable context presents itself with the launch of the tracking method for monitoring the implementation of the European Pact on Immigration and Asylum whose output will be the Commission's annual report to the Council. The first tracking method report will be published in 2010, while it will take on an extended form in 2011, to cover also the commitments relating to the Stockholm Programme and its accompanying Action Plan[7].

This means that following this report, the information currently communicated through the MIM will in the following years be provided in the Commission's annual report on the implementation of the Pact.

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4 See: Commission Communication: A Common Immigration Policy for Europe: Principles, actions and tools, COM(2008) 359 final.

5 Council Document 13440/08.

6 Commission Communication: An area of freedom, security and justice serving the citizen COM(2009) 262/4.

7 Commission Communication: Tracking method for monitoring the implementation of the European Pact on Immigration and Asylum, COM(2009) 266 final.

ANNEX:

INFORMATION PROVIDED BY MEMBER STATES

Member States	Administrative decision	Adopted legislation	Draft legislation	Judicial decisions	Other	Policy intentions, long-term programming	Total
Austria		2					**2**
Belgium							**0**
Bulgaria							**0**
Cyprus							**0**
Czech Republic		1	1				**2**
Denmark							**0**
Estonia							**0**
Finland							**0**
France							**0**
Germany		1					**1**
Greece		3					**3**
Hungary		4					**4**
Ireland							**0**
Italy	3		2				**5**
Latvia							**0**
Lithuania							**0**
Luxembourg							**0**
Malta		1					**1**
Netherlands			1		3	4	**8**
Poland		3					**3**
Portugal		1					**1**
Romania						1	**1**
Slovakia		1					**1**
Slovenia		1					**1**
Spain	4	1				1	**6**
Sweden		2			1	1	**4**
UK						2	**2**
Total	**7**	**21**	**4**	**0**	**4**	**9**	**45**