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Combined opinion

Title **Impact Assessments on the legal migration package:
1) seasonal workers, 2) intra-corporate transferees, 3) trainees
- RESUBMISSION**

(draft versions of 24 April 2009)

Lead DG **DG JLS**

1) Impact Assessment Board Opinion

(A) Context

Since the Tampere European Council of 1999 the EU has sought to develop a comprehensive immigration policy. With regard to legal migration, and in particular economic migration, the Commission proposed a comprehensive Directive in 2001 which was not accepted by the Council. Following The Hague Programme, the Commission presented a policy plan in 2005 suggesting to establish EU rules on specific channels of legal immigration: highly skilled workers, seasonal workers, remunerated trainees, and intra-corporate transferees. Meanwhile, the European Pact on Immigration and Asylum of 2008 committed to organise legal immigration in such a way that it takes account of the priorities, needs, and reception capacities of each Member State. The present proposals on seasonal workers, remunerated trainees and intra-corporate transferees, complete the legislative elements of the policy plan on legal migration, and deliver on the commitment made in the Pact.

(B) Positive aspects

The revised reports have explained the key modalities of the proposed approach, including the reference point used for assessing the equal treatment of third-country migrants in the absence of EU-wide standards. They have justified the legal base chosen for the initiatives (Article 63 TEC). The reports have explained the issue of the impact on the number of migrants and clarified whether the increase in their number is an objective.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of

General recommendation: While the revision of the reports has contributed to strengthening the rationale for these initiatives, the remaining references to the fact that these types of legal migration would cause unfair competition or labour market distortions should either be better substantiated or dropped throughout the text. Furthermore, the proportionality of and the need for EU action still require a more robust and convincing assessment. The reports should list, analyse, and compare possible alternative choices as regards the definition of workers and the conditions for admission. Finally, the impact of granting equal rights to seasonal workers on public finances should be better analysed.

(1) Drop the argument about unfair competition as a justification for EU action throughout the text unless it can be sufficiently substantiated. While the objectives of the reports on seasonal workers and trainees no longer refer to creating a level playing field for employers and workers or to distortions in the flows of third country migrants, this revision has not always led to consistent changes in other parts of the reports (such as in the sections on problem definition, subsidiarity or on impacts) which are still largely founded on these arguments. This is especially the case for the report on intra-corporate transferees whose objectives and rationale are still underpinned by the issue of unfair competition. The reports should drop this argument consistently from all the sections unless those distortions are convincingly substantiated (for instance by explaining the anti-competitive effects on the relevant markets and linking them to the evidence of exploitation).

(2) Further strengthen the other arguments for EU action. While the report on intra-corporate transferees has strengthened the arguments for EU action to respond to the needs of businesses, it should explain more convincingly why legislation is a proportionate solution for achieving this objective. The sections on subsidiarity in the reports on seasonal workers and on trainees need to be improved to show why Member States cannot manage these types of legal migration and working conditions on their own, and why the EU can do this better, considering in particular that the problems with seasonal workers seem to stem from enforcement issues at a national level (as regards e.g. working conditions, social rights or visa overstay). While the revised report on trainees has presented the lack of intra-EU mobility for trainees as an additional justification for EU action, it must show to what extent this is relevant for the objective of developing economic, social and cultural links with developing countries. Regarding seasonal workers, the implicit assumption that they are disproportionately likely to overstay their visas should be substantiated. In order to justify further EU action, the report on seasonal workers should furthermore better explain the conclusion in section 2.3 that the forthcoming Directive on sanctions against employers of illegal workers will leave most problems unsolved. Similarly, as requested in the first IAB opinion, the reports should still explain the possible link to the Posting of Workers directive in terms of the risk of a better treatment of third country nationals compared to posted EU workers, taking into account that the latter remain affiliated to social security schemes of their home country and are therefore not in the same position as domestic workers.

(3) List, analyse and compare possible alternative choices. The revised reports have explained the chosen modalities of the options in more detail, but still fall short of listing, analysing, and comparing possible alternative choices. This seems especially relevant for the definition of workers (for the reports on seasonal workers and trainees) and the

conditions for admission (for all the reports). While the report on intra-corporate transferees now explains that tax benefits are not included in the area of rights, it should state - as the IAB requested in its first opinion - if (and how) equal treatment provisions would affect the favourable taxation status of intra-corporate transferees. The same report has explained that no provisions addressing cross-border work for spouses would be proposed, but it should nevertheless clarify if spouses could access to work in all EU Member States (rather than only in the country of residence), even if this has not emerged from the consultation but may be relevant in border regions. It should also clarify whether intra-corporate transferees from new Member States will enjoy the same rights of mobility to and within the old Member States as intra-corporate transferees from third countries.

(4) Explain better the impact on public finances. With regard to the impact on public finances, the report on seasonal workers refers only to positive impacts resulting from increased tax revenues. However, it seems that there could also be costs on social expenditure as a result of the equal treatment requirement. The report should address these and at least analyse whether the net impact on public finances of Member States will be positive or negative.

(D) Procedure and presentation

As the IAB requested in its first opinion, the IA reports on intra-corporate transferees and on trainees should present the position of social partner organisations from the sectors most concerned by those categories of migrants and of Member States expressed during the consultation.

The executive summaries of all reports should contain information on quantified administrative costs. They should also present more systematically the impacts of all the options.

2) IAB scrutiny process

Reference number	2008/JLS/147; 2008/JLS/148; 2009/JLS/059; CLWP 2008 – Priority Initiatives
Author DG	JLS-B-1
External expertise used	No
Date of Board Meeting	Written procedure
Date of adoption of Opinion	12 MAI 2009 The present opinion concerns resubmitted draft IA reports. The first opinion was issued on 3 February 2009.