EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels, 7 September 2007
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Opinion

Title **Impact Assessment on proposed measures in the area of consular protection**

(draft version of 9 August 2007)

Lead DG **DG JLS**

1) Impact Assessment Board Opinion

(A) Context

Article 20 of the EC Treaty entitles Union citizens located in a third country in which their Member State is not represented to protection by the diplomatic and consular authorities of any other Member State represented. This initiative aims to render this right more effective, and follows-up on a Green Paper on diplomatic and consular protection of Union citizens in third countries which was published by the Commission in November 2006. The mandate for the Inter-Governmental Conference (IGC) agreed at the European Council in June 2007 also states that article 20 will be amended 'so as to provide for adoption of directives establishing cooperation and coordination measures'.

(B) Positive aspects

The summary of responses to the Green Paper (annex 1) provides a good overview of the position of stakeholders by presenting an aggregated summary of their views for each of the actions suggested in the Green Paper.

(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.

General recommendation: The actual magnitude of the problem that this initiative aims to address needs to be better demonstrated. On that basis, the analysis of necessity and value added of EU action should be fully developed. The Board recommends that JLS submits a revised draft of the IA report, on which the Board will issue a new opinion.

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(1) The evidence base underpinning the problem definition should be reinforced. The problem definition should clearly distinguish between legal issues that could potentially cause problems, and problems already occurring in practice which cannot adequately be solved with the current arrangements (assuming full implementation of the relevant articles of the acquis). The magnitude of the 'real' problems should be better demonstrated, preferably by including (estimates of) numbers of cases concerned or, if numbers cannot be obtained, by a convincing set of real-life examples. This should be sufficiently robust to counter the claim which was expressed during the consultation of Member States that there are very few real-life cases where current arrangements failed. In this context it should be noted that only 7 Member States chose to respond to the questionnaire that was circulated to them in order to collect data for this IA report.

(2) Necessity and value added of EU action should be demonstrated for every measure. The proposed initiative contains 26 actions, which cannot all be covered by a single analysis of necessity and added value of EU action. The IA report should therefore address these aspects for each of the proposed actions (including the ones that are discarded). This is especially relevant considering the fact that some Member States appear to raise subsidiarity concerns. This analysis would benefit from a clear separation throughout the IA report (problem definition, objectives, and policy options) between actions aimed at solving issues around Article 20 EC and actions aimed at other issues. At its meeting with the Board, JLS agreed to make these changes to the IA report.

(3) The total costs of the preferred option should be estimated. While the IA report clearly states that most of the proposed actions will involve only low or medium costs for the EU and/or Member States, it should also provide an estimate of the cumulated costs for all measures selected in the preferred option. At its meeting with the Board, JLS agreed to add this information.

(D) Procedure and presentation

It appears that all necessary procedural elements have been complied with, also with regard to the consultation on the 2006 Green Paper.

The section on monitoring and evaluation should include information on the proposed monitoring arrangements (who will monitor which of the indicators).

2) IAB scrutiny process

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Author DG	JLS-C-3
External expertise used	No
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