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AVIS DU COMITE DES EVALUATIONS D'IMPACT

Accompanying document to the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

providing for sanctions against employers of illegally staying third-country nationals

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EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels, 18 April 2007
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Opinion

Title **Impact Assessment on: minimum sanctions of employers of illegally resident third-country nationals (draft version of 30 March 2007)**

Lead DG **DG JLS**

1) Impact Assessment Board Opinion

(A) Context

This Commission initiative responds to Council conclusions of December 2006, requesting a proposal on measures against employers of illegal immigrants by April 2007. These conclusions were preceded by the The Hague Programme of November 2004, setting out a comprehensive agenda for action against illegal immigration in three broad areas: border security, illegal employment, and return.

(B) Positive aspects

The six policy options (including one hybrid option) that are identified in the IA report provide a good and credible basis for analysis, and this is emphasised by the fact that the IA report finally concludes that a combination of options is the preferred way forward. However, see the specific comment below concerning the distinction between administrative and criminal sanctions.

The IA report successfully manages to present the main information on all key steps of the assessment in slightly more than the 30 pages recommended for an IA report (excluding annexes).

The monitoring and evaluation criteria set out in the IA report are well-developed and should provide useful evidence of the effectiveness of the proposed actions.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments

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will be transmitted directly to the author DG.

General recommendation: The IA report should make better use of the information and analysis carried out in the supporting study, particularly in regard to setting out potential economic and social impacts. Furthermore, it could usefully clarify the context (including taking into account recent EU enlargements), expand upon the description of actions taken or foreseen at the Member State level and provide a clearer explanation as to how new obligations set at the EU level will be successful in tackling current enforcement difficulties. In addition, the option of harmonising administrative and criminal sanctions should be subdivided and each type of sanction separately assessed.

(1) The findings of the analysis of economic and social impacts need to be better set out. The consultant's study, which provides much of the base for the IA report, includes useful information on economic and social impacts. Without unnecessarily lengthening the text, the IA report should either import more of the data and evidence from the study or, at least, make greater use of cross-references. In addition, the IA report should provide a clearer differentiation in terms of types of 'illegal workers', and in terms of assessment of the impacts on the 'flow' of illegal workers and on those already present and working illegally.

It should be noted that the opinion has been prepared on the basis of the draft IA dated 30 March 2007, which did not include an assessment of administrative costs using the EU Standard Cost Model. The latter assessment has subsequently been submitted by DG JLS and some technical comments on it have been provided to JLS separately.

(2) The fact base and context of current and future developments in Member States needs to be clarified. The IA report should do more to describe and assess the measures already planned/foreseen or taken by Member States, particularly those relating to enforcement of existing sanctions or regularisation of illegal workers. It should also better explain to what extent an EU-imposed enforcement obligation for Member States will help to remedy the causes of poor enforcement which are outlined in the IA report.

(3) The option of introducing harmonised sanctions should be subdivided. The IA report assesses the harmonisation of administrative and criminal sanctions as a single policy option. But considering the different nature of the two types of sanctions and the preference for administrative sanctions stated by employer organisations during consultation, the IA report should separately assess and compare the lighter option of harmonising administrative sanctions only and the heavier option of harmonising both. The IA report should also seek to better explain the significance of enforcement in relation to the other elements of the preferred option.

NB. This recommendation concerns an issue raised during further scrutiny of the draft IA report and was, therefore, not addressed in the Board's first opinion.

(D) Procedure and presentation

All procedural requirements appear to be complied with, but the IA report could explain the reasons for organising the consultation process the way it was done, and provide more detail on who was consulted and at what point.

2) IAB scrutiny process

Reference number	2007/JLS/014; CLWP 2007 Strategic initiative
Author DG	JLS-B-2
External expertise used	No
Date of Board Meeting	Written procedure
Date of adoption of Opinion	18 April 2007; this opinion updates and replaces the opinion issued by the Board on 27 March on an earlier draft of the IA report (draft version of 14 March)