



Brussels, 06 AVR. 2009  
D(2009) 2302

## Opinion

### Title

**Impact Assessments on the Council Directives on:**

**(a) minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted**

**(b) minimum standards on procedures in Member States for granting and withdrawing international protection**

**(draft versions of 6 March 2009)**

### Lead DG

**DG JLS**

## **1) Impact Assessment Board Opinion**

### **(A) Context**

According to the decision of the Tampere European Council (1999) the first stage of the creation of the Common European Asylum System (CEAS) involved harmonising Member States' legal frameworks on the basis of common minimum standards by adopting four main legislative instruments, including the so-called "Qualification Directive" (2004/83/EC) and "Procedures Directive" (2005/85/EC). The Hague Programme invited the Commission to conclude the evaluation of the first phase legal instruments and to submit the second phase instruments with a view to their adoption by the end of 2010. In the Policy Plan on Asylum of 17 June 2008, the Commission proposed *inter alia* to revise the Qualification and Procedures Directives in order to provide better and more harmonised standards of protection through further alignment of Member States asylum laws. The European Pact on Immigration and Asylum, adopted on 17 October 2008, provided further political endorsement for this objective.

### **(B) Positive aspects**

The reports provide a wide range of background information and make an effort to address a large number of issues, each with their own set of policy options. The report on the Qualifications Directive draws specifically on the evaluation of the implementation of the existing directive; however this is not the case for the report on the Procedures Directive. Administrative costs are assessed using the EU Standard Cost Model.

### **(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 the impact assessment reports.*

**General recommendation:** The reports need significant further work on several important points. While focussing on enhancement of protection and elimination of disparities among Member States, the reports should further demonstrate that (a) the focus on the legal revision could sufficiently address the problem of the insufficient and diverse standards of protection (b) the harmonisation of minimum standards will indeed effectively contribute to a fairer 'burden' sharing among the Member States, and (c) the envisaged measures are proportionate and do not go beyond the obligations established by the EC Treaty and international law. In addition the reports should make an effort to estimate the magnitude of implementation costs, discuss the potential risk of abuse of the asylum system and elaborate the monitoring and evaluation arrangements. During the IAB meeting, DG JLS stated its intention to take on board these recommendations.

**Given the fundamental nature of these recommendations, the Board requests JLS to submit revised versions of the reports on which it will issue second opinions.**

**(1) Provide a broader analysis of the problems faced in the area of asylum policy.** The reports should illustrate the scale of the identified problems (insufficient and diverse standards of protection) in terms of the number of asylum seekers potentially concerned, and assess to what extent these problems can be attributed to ambiguous provisions of the current Directives and to what extent other obstacles (such as low willingness and cooperation, or a more generous approach by some Member States) have impeded the achievement of a more harmonised approach. In view of this the reports should explain further the relevance of different flanking measures (such as the establishment of the European Asylum Support Office) and develop the baseline scenario accordingly.

**(2) Strengthen the case for EU action.** Given that the case for EU action is based on the claimed risk that certain Member States will be overburdened by asylum flows, the reports should strengthen the evidence for a direct link between existing levels of protection and the magnitude of the inflows of asylum seekers. Given the structural pull factors (such as historic networks, geography and different prosperity of Member States) the reports should discuss to what extent the more stringent legal provisions could contribute to the reduction of secondary movements of asylum seekers and thus provide a fairer 'burden' sharing among the Member States.

The reports should clarify what they use as a reference point for the 'minimum level' of protection, and substantiate the claims that certain standards established by the current Directives are not sufficient in these terms. For each of the issues identified, the reports should demonstrate that the existing standards (in some Member States) are below the standards established by EU and international law (such as EC Treaty, case-law, the Charter of Fundamental Rights and the Geneva Convention). The reports should also demonstrate that the measures proposed (e.g. Qualification Directive: 'enhancing the integration of beneficiaries of international protection by taking into account their specific needs' or Procedures Directive: 'free legal assistance at first instance to all asylum applicants who lack financial resources') are proportionate and do not go beyond what is necessary to achieve the set objectives.

**(3) Estimate the magnitude of implementation costs and expected long term savings.** Considering the potential magnitude of the direct costs of improving the procedures applied to asylum seekers and the enhanced level of protection, the reports should provide (at least indicative) estimates of the implementation costs, including how they will be distributed among the Member States while taking into account the possibility of an overall increase in asylum takers that could result from up-graded EU wide protection levels. The reports should also demonstrate more explicitly to what extent these costs could be off-set by savings in administrative and reception costs in the long term (for example as a result of more efficient first instance procedures).

**(4) Present better the policy context.** Firstly, the reports should briefly recall the content of the Commission Policy Plan for the second stage of the CEAS, list all the measures that the Commission intends to propose and indicate how they relate to one another. Secondly, given that only a modest level of harmonisation was achieved during the first stage of CEAS, the reports should explain the changes in circumstances (e.g. institutional setting, development of the case law) which would now make the more stringent and enhanced standards a more realistic policy scenario.

**(5) Discuss the issue of abuse of the asylum system.** Given that certain proposed measures facilitate access to the asylum system (e.g. broadening of the definition of family members, deletion of the 'European safe third country' concept, granting free legal assistance) the reports should assess whether, as a result of these measures, the risk of abuse of the asylum system will increase. Where relevant, the reports should discuss safeguard measures to prevent the increase in unfounded asylum applications.

**(6) Elaborate the monitoring and evaluation arrangements.** The reports should identify which of the numerous indicators listed in the Annexes are already available and which still need to be developed. Given the administrative costs involved in providing such data, the necessity of all the identified indicators should be balanced against their potential value added. The reports should also explicitly discuss how the envisaged monitoring and evaluation arrangements would enable to overcome the shortage of key data experienced during the preparation of the current initiatives.

**(7) The reports should present the (sub)options and the assessment of each of them in a more transparent way** (e.g. using tables) and substantiate further the selection of the preferred (sub)options by comparing them explicitly in terms of effectiveness, efficiency and coherence against the baseline. In addition, the proportionality of the different (sub)options should be systematically assessed.

#### **(D) Procedure and presentation**

The accessibility and readability of the reports should be improved by presenting information in a more succinct form (especially in the problem definition) and by incorporating all key information from the Annexes into the main part of the reports. The reports should include a thorough analysis of the results of the stakeholder consultation, including the different views expressed. The executive summaries should contain an overview of any quantified costs and benefits and an explanation of the criteria applied for the selection of the preferred (sub)options.

## 2) IAB scrutiny process

Reference number	2008/JLS/024 and 2008/JLS/023 (strategic initiatives, CLWP 2008)
Author DG	JLS
External expertise used	No
Date of Board Meeting	1 April 2009
Date of adoption of Opinion	<b>0 6 AVR. 2009</b>