



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
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28 JUL. 2009

Combined 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

Resubmissions – (draft versions of 6 July 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 "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 to revise the Qualification and Procedures Directives to provide better and more harmonised standards of protection through further alignment of Member States asylum laws. The European Pact on Immigration and Asylum of October 2008 provided further political endorsement for this objective.

(B) Positive aspects

The revised reports present better the overall policy context and provide a broader overview of the problems related to insufficient and diverse standards for the protection of asylum seekers. They have explained further the need for EU action by (i) providing more evidence for a link between existing levels of protection and the magnitude of the inflows of asylum seekers, (ii) demonstrating that current provisions of the directives are insufficient with respect to international or EU human rights standards, and

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11. Office: BERL 6/29. Telephone: direct line (32-2) 2981898. Fax: (32-2) 2965960.

E-mail: impact-assessment-board@ec.europa.eu

Website: http://www.cc.cec/iab/i/index_en.cfm

(iii) explaining that the harmonisation of protection standards and procedures are prerequisites for the fair and efficient operation of the Dublin system. Both reports have made an effort to give an indication of implementation costs whether in terms of the number of asylum seekers concerned (Qualification Directive), or through a more precise indication of concrete amounts (Procedures Directive). Both reports have provided a more systematic discussion of the proportionality of the measures proposed, which has led to a change in one of the preferred sub-options (enhanced access to accommodation for the beneficiaries of international protection).

(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: Following the Board's first opinion, the reports have been significantly revised and the majority of the recommendations have been taken on board. However, there are some outstanding issues which the reports need to explain further. Firstly, they should provide a more comprehensive analysis of the causes of wide divergences in Member States' procedural arrangements for the protection of beneficiaries of international protection. This should address the issue of whether certain Member States voluntarily go beyond the relevant international and EU law standards. Secondly, the report should, for all measures proposed in the Qualification Directive (such as enhancing access to the recognition of qualifications, employment, integration facilities, counselling services and to accommodation) include references to human rights standards set by EU or international law. Where the measures proposed go beyond these standards, the report on the Qualification Directive should strengthen the arguments for the necessity of EU action in those areas. Thirdly, the report on the Procedures Directive should discuss whether enhanced access to the asylum system could lead to an increase in unfounded asylum applications. Finally, both reports should be more explicit about how the shortage of data experienced during the preparation of the current initiatives would be addressed so that future actions in this area have a firmer evidence base.

(1) Give a more comprehensive explanation of insufficient harmonisation, including that certain Member States might voluntarily go beyond the agreed standards. The reports have explained that the wide divergences in Member States' legal approaches in the area of the protection and procedures of asylum seekers result mainly from vague and insufficient minimum standards set out in the current directives. However, they should also assess to what extent other causes, such as low willingness and cooperation or voluntarily going (by certain Member States) beyond the full compatibility with the relevant international or EU human rights standards, as well as difficulties in transposition and implementation of corresponding national legislation, have contributed to those divergences. The reports should explain to what extent the latter cause could be responsible for the claimed overburdening of certain Member States.

(2) In the Qualification Directive, strengthen the case for EU action as regards raising the standards for integrating the beneficiaries of international protection (enhanced access to recognition of qualifications, employment, integration facilities, counselling services and accommodation). While for the majority of issues the reports have invoked specific international or EU legal standards as reference points for the

“minimum level” of protection and subsequently explained why certain standards established by the current directives are not sufficient in these terms (see annexes 23 and 19 of the respective reports on the Qualification and Procedures Directives), for the issues related to the "specific needs" of beneficiaries of international protection the report only refers to very broad legal standards or political initiatives (art. 2 and 3 of the Treaty, the Hague Programme). The report on the Qualification Directive should therefore add references to relevant specific international or EU law standards for the "minimum level" of protection in this area. Where the proposed measures go beyond these standards, the report should strengthen the arguments for the necessity of EU legislative action in this field (for example, by demonstrating the relevance of those measures for limiting secondary movements and improving the efficiency of the asylum process). It should also specifically address the question of why legislating is justified despite the lack of precise information on Member States in which the problems occur, what number of asylum seekers is affected, and what the costs of legislative amendment will be.

(3) Discuss the issue of the potential increase in unfounded asylum applications.

While both revised reports have addressed the issue of abuse of the asylum system, the report on the Procedures Directive should still discuss whether enhanced access to the asylum system could increase the number of unfounded asylum applications, and whether this could aggravate the existing backlog of applications.

(4) Explain how the issue of the current shortage of data will be addressed. While the list of indicators has been revised in line with the Board's recommendation, the reports should be explicit about how the envisaged monitoring and evaluation arrangements would enable the shortage of key data experienced during the preparation of the current initiatives to be overcome, providing a firmer evidence base for any future actions in this area.

(D) Procedure and presentation

A serious further effort should be made to bring the reports closer to the 30-page limit set out in the IA Guidelines. Where some key information has only been presented in annexes (such as the comparison of options), the reports should provide its summary in the main part and add references to respective annexes.

Respective sections 6.6 and 6.4.5 of the Qualification and Procedures Directives on the political feasibility of the legal revision should be brought forward to sections 1.1 discussing the background of the two initiatives.

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	Written Procedure
Date of adoption of Opinion	28 JUL. 2009 The present combined opinion concerns resubmitted draft IA reports. It replaces the opinion issued on 20 July 2009. The first opinion was issued on 6 April 2009.