



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title

DG HOME - Impact Assessment for a legislative proposal on the conditions of admission of third country national students, researchers, school pupils, volunteers, remunerated and unremunerated trainees and au pairs

(Resubmitted draft version of 19 November 2012)*

(A) Context

Article 79 of Treaty on the Functioning of the European Union tasks the Union with developing a common immigration policy aimed at ensuring efficient management of migration flows and fair treatment of third country nationals residing legally in the Member States. Directives 2004/114/EC (Students Directive) and 2005/71/EC (Researchers Directive) regulate access and rights of researchers, students, school pupils, volunteers and unremunerated trainees into the EU. Despite the fact that most Member States had correctly transposed both Directives, they appear not to be adapted to the current circumstances and policy context. This impact assessment therefore examines how to adapt this legislative framework in order to reap the benefits that well-managed migration can bring.

(B) Overall assessment

While the report has been improved along the lines of the Board's second opinion, it has not provided evidence demonstrating that Member States cannot adequately protect au pairs themselves or facilitate the access of third country nationals to their labour markets. The report should further demonstrate the size of the identified problems and their cross-border effects, in particular for remunerated trainees. It should analyse the excessiveness of existing fees in depth and better explain the need to grant third-country students the same rights as researchers. The report should provide further information on the design of individual measures and better assess their proportionality vis-à-vis the current highly divergent national immigration rules. It should then present a more differentiated and nuanced analysis of implementation costs across Member States and better demonstrate the efficiency and proportionality of the preferred option. Finally, the views of stakeholders with reserved or negative positions on the initiative should be presented and analysed in greater depth.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

(1) Strengthen the problem definition and develop the baseline scenario. While the report provides a detailed description of the widely diverging national immigration rules, the magnitude of the problems is still not clear (i.e. what share of incoming third-country national students and researchers face difficulties in admission conditions, procedural safeguards or access to national labour markets). While the report acknowledges that for remunerated trainees, au pairs, pupils etc. the necessary data on their inflow into the EU is not available, at the same time it suggests that for these groups, there is a risk of overstaying or illegal entry. This argumentation needs to be justified, streamlined and substantiated (or otherwise dropped). The problem definition should also include problems related to optional character of pupils etc. Finally, the baseline scenario should be further strengthened by elaborating on intra-EU mobility aspects in more detail and by taking due account of the envisaged regulatory developments, e.g. related to intra-corporate transferees.

(2) Better demonstrate the need for EU action. The report should better explain the relevance of intra-EU mobility for remunerated trainees and the need to grant third-country national students the same rights as researchers (i.e. equal treatment related to working conditions, social security, tax benefits, access to public goods and services). In this context, it should clarify if there is any risk of regulatory inconsistency with the Single Permit Directive, which currently allows Member States to restrict some of these rights. Furthermore, the alleged excessiveness of fees should be analysed in greater depth. Finally, the Board notes that the report does not provide any evidence to support arguments that some Member States cannot prevent exploitation within the au pair sector and that the envisaged access to labour market measures are meaningful only in cases where Member States decide to issue the necessary authorisation to work.

(3) Better explain the options and their proportionality. A number of clarifications remain to be made, in particular related to ensuring that the fees charged to third-country nationals as part of the admission procedure are "proportionate" and to setting-up national contact points enhancing intra-EU mobility. The report should also revisit its argumentation on the proportionality of the envisaged measures, particularly in relation to Member States that currently have a marginal inflow of third-country nationals. Finally, as already requested in the previous Board opinion, the report should clarify if other alternative measures have been considered but discarded during the impact assessment process.

(4) Better assess and compare impacts. The impact analysis still needs to be strengthened, in particular by providing a more differentiated and nuanced assessment of implementation costs across Member States on one hand and the magnitude of the induced positive change on the other. Such an assessment should duly reflect: (i) the number of affected third country national students and researchers; (ii) the lack of data on remaining groups; (iii) the fact that a number of Member States already have the envisaged provisions in place or go beyond them; and (iv) that Member States may decide not to grant the necessary authorisation to work. Importantly, when comparing policy options, their overall effectiveness and efficiency needs to be assessed separately and entirely (i.e. not per policy objective). The report should strive to better demonstrate that the preferred option (i.e. the most ambitious one) is not, despite having the highest implementation costs, the least efficient one.

(5) Better present stakeholders' views. While the report has clarified that some stakeholders expressed reservations on the initiative, in particular national immigration

authorities and some educational authorities, these concerns should be elaborated in further detail.

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 report.

(D) Procedure and presentation

The report still needs to identify the benchmarks against which the monitoring indicators will be measured and to further revise the executive summary. Finally, implementation costs should be presented under economic impacts and not when discussing feasibility aspects.

(E) IAB scrutiny process

Reference number	2012/HOME/014
External expertise used	No
Date of IAB meeting	Written procedure This opinion concerns a resubmitted draft IA report. The first opinion was issued on 7 September 2012 and a second opinion was issued on 23 October 2012.