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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 version of 25 September 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 to some extent along the line of the Board's first opinion, the evidence presented in terms of a need for, and proportionality of, further harmonisation of national immigration rules remains weak. The report fails to demonstrate why Member States cannot adequately achieve the objectives of the proposed action themselves, particularly as regards protecting au pairs or facilitating the access of third country nationals to labour markets. It still needs to provide concrete evidence that would duly reflect the existing diversity of national immigration rules and substantiate the size and cross-border effects of the identified problems, including social dumping. The report should also provide more precise information on the design of individual measures, namely those setting EU-wide binding measures, such as time limits related to admission procedures or to the minimum job-seeker status granted to third country nationals. Based on a further developed baseline scenario, it should analyse the positive as well as negative impacts in greater detail and explain how, and with what likelihood, these will materialise in practice. The report should assess in detail the impacts on Member States, particularly those that would need to introduce the most changes to their immigration rules and where additional budgetary efforts would be needed. It should then provide an overview of total costs and benefits, both quantified and non-quantified, and compare the policy options against the baseline scenario in their entirety and in terms of their efficiency. Finally, as requested in the Board's

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

first opinion, the report should present stakeholders' different views throughout the text, including the views of Member States/national authorities.

Given the nature of these concerns, the IAB requests DG HOME to submit a revised version of the IA report on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Strengthen the problem definition and develop the baseline scenario. While the report has improved the presentation of problems, it should still provide concrete evidence that would substantiate their existence and magnitude. A complete overview of relevant immigration rules in Member States and the corresponding flows of foreign students (et al.) should be provided, as already recommended in the Board's first opinion. The report should also better explain and corroborate with credible evidence the problem of social dumping and unfair competition between EU employers related to the level of remuneration of working students and trainees. If such evidence cannot be provided, this should be well justified and it should be explained why EU action needs to be taken nevertheless. While it became clearer that easy access to work makes an important contribution to attracting foreign students and researchers, this should be further analysed in the EU context (where, unlike in the US, Canada or Australia, granting a work permit remains an exclusive competence of Member States). Finally, the report should present a more developed baseline scenario duly taking into account ongoing and planned initiatives at the EU/national level, including a better explanation of the link with the Single Permit Directive.

(2) Better demonstrate the need for EU action. This recommendation is still to be addressed by the report. It should better demonstrate the need for further harmonisation of national immigration rules, particularly for issues where the cross-border effects appear to be very limited. For example, it should better explain why some Member States cannot prevent exploitation within the au pair sector or why, despite their ability to do so, they decided not to grant foreign students and researchers (and their family members) automatic access to their labour markets. In this context, the report should either drop or more convincingly substantiate arguments about a need to prevent intra-EU competition for foreign students (e.g. linked to labour market access).

(3) Improve the presentation of options. While the report has significantly improved the presentation of policy options, their consistency with the identified problems needs to be further enhanced. For example, neither the recognition of diplomas, nor the proportionality of fees or optional character of rules on student pupils et al. (that seems to have been dropped), are currently presented as problems. The report should also explain the rationale behind packaging the individual measures, including a convincing explanation of presenting the intra-EU mobility related measures under the most ambitious policy option only. More precise information should still be provided on some individual measures and their proportionality, such as defining: (i) the time limit related to procedures or to the job-seeker status (including the related rights on, for example, social security protection); (ii) harmonised conditions for au pairs; or (iii) equal treatment rights as regards pay. Finally, the report should clarify if other alternative measures have been considered but discarded during the impact assessment process.

(4) Better assess and compare impacts. While the report has provided a more detailed assessment of impacts for each policy options, this analysis still needs to be significantly strengthened and its consistency with the revised problem definition and options

enhanced. In particular, the report should analyse the impacts on stakeholders in further detail and explain how they would materialise in practice. In doing so, it should: (i) assess the impacts against a well developed baseline scenario duly reflecting the divergences at national level; (ii) ensure that the quantitative analysis fully corresponds to the underlying arguments; and (iii) present the conclusions with the necessary degree of caution. For example, the report should clarify how likely it is that benefits related to facilitating labour market access and preventing social dumping will materialise and indicate which positive or negative impacts can be expected for employers and intra-EU migrants. As recommended in the Board's first opinion, this analysis should include the assessment of impacts on Member States, particularly the most affected ones. Finally, in order to substantiate the conclusion that positive impacts of the preferred option should outweigh its costs, the report should compare policy options against the baseline scenario in their entirety and in terms of their efficiency (i.e. on the basis of an overview of the overall costs and benefits, quantified as well as non-quantified ones).

(5) Better present stakeholders' views. This recommendation is still to be addressed by the report. It should still be clarified on which elements of the report (i.e. problem definition, subsidiarity, policy options, impacts) stakeholders, including Member States/national authorities, were consulted and present their different views throughout the text. The result of the on-line survey should be presented with more caution, particularly in view of the geographical concentration of the responses.

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 present: (i) more operational monitoring indicators and evaluation arrangements; (ii) a glossary of the key terms; and (iii) the executive summary fully aligned with the impact assessment report, including the full presentation of the policy options and their impacts.

(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.