



Brussels, 03 FEB. 2009
D(2009) 859

Combined opinion

Title **Impact Assessments on the legal migration package: 1) seasonal workers, 2) intra-corporate transferees, 3) trainees**

(draft versions of 8 January 2009)

Lead DG **DG JLS**

1) Impact Assessment Board Opinion

(A) Context

Since the Tampere European Council of 1999 the EU has sought to develop a comprehensive immigration policy. With regard to legal migration, and in particular economic migration, the Commission proposed a comprehensive Directive in 2001 which was not accepted by the Council. Following The Hague Programme, the Commission presented a policy plan in 2005 suggesting to establish EU rules on specific channels of legal immigration: highly skilled workers, seasonal workers, remunerated trainees, and intra-corporate transferees. Meanwhile, the European Pact on Immigration and Asylum of 2008 committed to organise legal immigration in such a way that it takes account of the priorities, needs, and reception capacities of each Member State. The present proposals on seasonal workers, remunerated trainees and intra-corporate transferees, complete the legislative elements of the policy plan on legal migration, and delivers on the commitment made in the Pact.

(B) Positive aspects

The presentation of consultation results as an integrated part of the assessment tables can be considered as good practice.

(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 versions of the impact assessment reports.

General recommendation: As they stand, the reports do not sufficiently support the conclusion that legislation is a proportionate response to the problems as they have

been defined. In particular, the focus on the functioning of labour markets does not seem appropriate, given the very small numbers of third-country migrants involved. The reports should also justify and may need to reconsider the legal base chosen for the initiatives (Article 63 TEC), in particular with regard to working conditions for third-country nationals. The reports therefore need considerable redrafting in terms of the problems being addressed and the choices made about the key modalities of the legislation. The reports should clarify what they use as a reference point for the equal treatment of third-country seasonal workers, intra-corporate transferees and trainees, in the absence of EU-wide standards and definitions applicable to EU-citizens, and whether the preferred approach might lead to intra-EU migrants being treated less favourably than third-country migrants. The reports should also assess the consequences of the proposals for the number of third-country migrants (whether seasonal workers, intra-corporate transferees or trainees) and the financial and economic impacts of the proposal on seasonal workers on employers and public finances.

Given the fundamental nature of these recommendations, the Board requests JLS to submit a revised version of all 3 reports on which a new opinion will be issued.

(1) Refocus the rationale for these initiatives and explain why regulating is a proportionate solution. The arguments provided about creating a level playing field in the internal market, improving the functioning of the labour market, and distortions in the flows of these 3 categories of third country migrants as a result of differences in the legislation of Member States are not convincing (given the very low numbers of third-country migrants involved). A stronger case might be made about the need to regulate migration to avoid exploitation, but also then the reports should justify why regulating is proportionate considering the low number of third-country migrants involved and why 3 new Directives are preferred to widening the scope of existing migration legislation (in particular, why intra-corporate transferees could not be included in a framework for highly skilled workers). Refocusing the rationale for these initiatives will also require an adjustment of objectives, policy options, and the criteria for assessing the options. The reports should describe linkages with existing legislation in the area of immigration and labour market, including the recent Directive on Sanctions for Employers, the Posting of Workers Directive, and Accession Treaties. Should the author DG maintain the focus on issues related to working conditions, there may be a need to reconsider the proposed legal base (Article 63 TEC) in relation to other Treaty provisions such as Article 137.

(2) Justify and explain the key modalities of the proposed approach, including the reference point used for assessing the equal treatment of third-country migrants in the absence of EU-wide standards, and whether intra-EU migrants could be treated less favourably than third-country migrants. For those aspects of the proposal where there are degrees of freedom, notably the definition of the various types of workers, the list of rights to which the principle of equal treatment applies, and the conditions for admission for third-country trainees, the reports should identify these, list possible alternatives, and justify the choice made. With regard to the principle of equal treatment, the reports should also clarify what is used as a reference point for this equality given that there are no EU-wide definitions and established rights for all these categories of EU-workers. The reports should state whether the proposals would lead to a less favourable treatment of intra-EU migrants in comparison with third-country migrants, for instance by the Member States applying transition periods for the free movement of workers or in the absence of legislation concerning intra-EU migrants such as trainees. The report on

intra-corporate transferees should also assess if and how equal treatment provisions would affect their favourable taxation status and whether the right to access to work for their family members is limited to the country of residence or applies to all EU Member States (clarifying the issue of cross-border work as well).

(3) Analyse the impacts on the number of migrants and improve the analysis of the impacts on enterprises and public finances. The reports should clarify whether an increase in the number of third-country migrants in the 3 categories is an objective of this proposal and analyse in the light of this objective whether granting equal rights to these migrants might make them less attractive for employers, leading to reduced demand. Using this projection as a basis, the report on seasonal workers should analyse in more detail the costs for employers so as to justify the statements that these costs are limited. The report should also bring together the various references to the (positive and negative) impacts on SMEs of the provisions on seasonal workers ("SME test"). With regard to the impact of the proposal on public finances, the same report should explain on what basis it projects a positive impact and indicate the size of this impact.

(D) Procedure and presentation

The reports should state whether social partner organisations from the sectors most concerned by the various categories of workers (e.g. agriculture, tourism) have been consulted and present their position and that of Member States on those proposals.

Each report should be accompanied by an executive summary in the form of a separate staff working document.

Specifically with regard to third-country trainees, the report should be more precise on the content of the options and the nature of accompanying enforcement measures.

2) IAB scrutiny process

Reference number	2008/JLS/147; 2008/JLS/148; 2009/JLS/059; CLWP 2008 – Priority Initiatives
Author DG	JLS-B-1
External expertise used	No
Date of Board Meeting	29 January 2009
Date of adoption of Opinion	03 FEB. 2009