



**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.**

**(draft version of 26 June 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**

**The report needs to provide a clearer and more differentiated justification for the revision of existing EU immigration rules and should be significantly improved in a number of important respects. First of all, it should better explain the problems that foreign students and researchers face when entering and moving around in the EU and illustrate these with concrete evidence. In doing so, the report should clarify which problems are driven primarily by the inefficiencies of the existing legal framework and which are linked to wider policy considerations such as promoting EU competitiveness or protecting fundamental rights. Secondly, the justification for further harmonisation of national immigration rules needs to be strengthened, particularly with respect to au pairs or access to labour market. Thirdly, the report should present more credible policy options by focusing on content rather than form, explaining the envisaged measures in greater detail and better presenting alternative solutions. Fourthly, the report should better assess the impacts on different stakeholders and notably on individual Member States and – on that basis – should better assess the proportionality of EU-wide binding measures. Finally, the report should present stakeholders' different views throughout the text, including the views of Member States/national authorities.**

**Given the nature of these recommendations, the Board asks DG HOME to submit a revised version of the report, on which it will issue a new opinion.**

\* 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.** The report should better explain the problems that foreign students (et al.) and researchers face when entering and moving around within the EU. In doing so, it should differentiate and clarify the link between the problems primarily related to: (a) the effectiveness, efficiency and enforcement of the Directives' existing provisions (e.g. their clarity, specificity, consistency, relevance etc.), (b) wider considerations, such as the contribution to EU competitiveness or attractiveness (e.g. supply of highly skilled labour) and (c) fundamental rights (e.g. au pairs). In order to substantiate the problems and to indicate their magnitude, the report should provide concrete evidence (e.g. based on enquiries, complaints or case studies) as well as an overview of relevant immigration rules in Member States and the corresponding flows of foreign students and researchers. The extent to which the EU/national immigration rules contribute to the attractiveness of the EU for foreign students and researchers should be better explained and presented in a more balanced manner (particularly in comparison to other determinants such as reputation of a hosting institution and to immigration rules of the EU's main competitors). On that basis, the report should present a more developed baseline scenario duly taking into account ongoing and planned initiatives at the EU/national level.

**(2) Better demonstrate the need for EU action.** Based on the improved problem definition, the report should strengthen the argumentation supporting the need for further harmonisation of national immigration rules, particularly for issues where the cross-border effects are minimal. For example, it should better explain why Member States cannot prevent exploitation within the au pair sector or why, despite their ability to do so, they decided (some of them) not to grant foreign students and researchers (and their family members) automatic access to their labour markets. The report should also clarify why, notwithstanding their obligation to issue residence permits (once all necessary conditions are fulfilled), Member States may decide not to grant the necessary long-term visa. In this context, the report should credibly demonstrate how the current situation impacts on the level playing field between Member States or how it creates unfair competition between EU employers.

**(3) Improve the presentation of options.** In order to clearly present alternative solutions and avoid duplication, the report should present policy options that better correspond to the different categories of problems as identified above and that focus on content rather than form. Furthermore, it should provide a more detailed description of the envisaged measures (e.g. full harmonisation of admission conditions, enhancing procedural safeguards or increasing clarity of the rules), explain the rationale behind their design and clarify if other alternatives have been considered but discarded during the impact assessment process. On that basis, the report should present feasible combinations of measures addressing all the problems in alternative ways or with different degrees of ambition.

**(4) Better assess and compare impacts.** The report should duly reflect the uncertainty and clearly acknowledge the lack of robust evidence when assessing the impacts of the proposed measures (e.g. related to attracting more students and researchers to the EU or increasing their contribution to the EU labour market). It should analyse the impacts on stakeholders in greater detail and explain how they would materialise in practice. This analysis should include the assessment of impacts on Member States, particularly the

most affected ones (i.e. those that would need to introduce most changes to their immigration rules and where additional budgetary efforts would be needed). Against this background and given the highly divergent circumstances across Member States, the report should assess the proportionality of imposing binding EU measures (such as time limits). Finally, the policy options should be explicitly compared against the baseline scenario in terms of their effectiveness, efficiency and coherence.

**(5) Better present stakeholders' views.** The report should clarify 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 should present more operational monitoring indicators and evaluation arrangements. All underlying evidence should be systematically referenced throughout the text. In order to facilitate reading for non-experts, a glossary of the key terms should be added. The executive summary should follow the structure of the impact assessment report, including the presentation of the policy options and the assessment of their impacts.

#### **(E) IAB scrutiny process**

Reference number	2012/HOME/014
External expertise used	No
Date of IAB meeting	5 September 2012