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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE FITNESS CHECK
on EU Legislation on legal migration

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1. Context and objectives

The EU legal migration framework is laid down in several directives¹, adopted between 2003 and 2016, which cover various categories of third-country nationals and regulate various aspects of the migration process (in particular admission and residence conditions, equal treatment rights and mobility within the EU).

The main purpose of this fitness check is to assess whether the EU legal migration framework is still fit for purpose, to identify **any inconsistencies and gaps**, and to look for possible ways to **streamline and simplify existing rules**. The fitness check, which started in 2016, was supported by a thorough **consultation process** – including an open public consultation and targeted consultation of key stakeholders (Member States, the European Parliament, the European Economic and Social Committee, Non-Governmental Organisations, and economic and social partners) – as well as by an external study.

2. Key findings

The fitness check assessed the EU's *acquis* on legal migration against **five criteria**: relevance, coherence, effectiveness, efficiency, and EU added value.

Relevance

EU policy on legal migration remains broadly in line with the **general objectives** set at the 1999 European Council in **Tampere** and translated into the **Lisbon Treaty**, namely to ensure efficient management of migration flows to the EU and fair treatment for legally resident third-country nationals. However, there have been changes in the policy **specific objectives**, following changes in the overall political framework in the field of migration: from setting common minimum standards on rights, admission and residence conditions for *all* third-country nationals, to attracting *the third-country nationals that the EU economy 'needs'*, who can contribute to addressing skills and labour shortages, thus making the EU more competitive.

The evaluation has shown that **the objectives of the Directives are still relevant** to the EU's current needs in terms of legal migration. However, a number of potential **gaps** between objectives and needs have been identified. These relate mainly to the directives' **material scope** (they do not cover various problems occurring in the course of the various 'migration phases', such as the procedures for obtaining an entry visa), and their **personal scope** (which does not include – at least as far as admission conditions are concerned – major categories of third-country nationals, such as non-seasonal low- and medium-skilled workers, job seekers, service providers covered by the EU's trade commitments except intra-corporate transferees, and self-employed people/entrepreneurs).

Although these gaps are generally covered by **national rules** (for instance, all Member States have national schemes for the admission of low- and medium-skilled third-country workers), and although these categories are partly covered at EU level as regards admission procedures and equal treatment (through the Single Permit Directive), the result is **a fragmented system**. Though additional, more reliable data is needed to assess the magnitude of these gaps precisely, these gaps will need to be addressed by future policy developments. The evaluation also recognises the need to better understand and consider how socioeconomic and environmental factors (including climate change) may affect the relevance of the EU legal migration *acquis*.

¹ Nine directives are covered (though only those that have been in force for several years have been assessed in terms of effectiveness and efficiency): family reunification (2003); long-term residents (2003); students and researchers (2004, 2005; recast in 2016); EU Blue Card (2009); Single Permit (2011); seasonal workers (2014); intra-corporate transferees (2014).

Coherence

The analysis has shown that the legal migration directives and their objectives **are consistent and complement one another overall**. However, it has also revealed a number of specific **internal coherence issues**, most of them due to: a) the '**sectoral approach**', which implies that different directives regulate in different ways the specific needs and characteristics of the categories of migrants covered; and b) the different historical origins of the directives, each of which had its own specific characteristics, policy constraints and negotiation history. Some internal coherence issues (e.g. in terms of different procedural requirements across different categories) have actually affected **the extent to which the directives' objectives have been achieved** and/or have created **unnecessary administrative burdens**.

Different national implementation choices have also exacerbated certain inconsistencies: in particular, the different ways in which the directives' numerous '**optional clauses**' have been implemented, and the possibility for Member States to retain **parallel national schemes** for highly-skilled workers and long-term residents. For instance, the existence of national permits for permanent residents has limited the impact on the harmonisation of different types of long-term residence status provided for by the Long-Term Residents Directive, which has been less successful than intended (three million EU long-term residents' permits vs. seven million national ones). Furthermore, the current regulatory framework for recruiting the same category of highly-skilled workers (which is possible under both the EU Blue Card and national schemes) is complex for third-country nationals and employers alike.

As regards **external coherence**, the EU legal migration directives interact with many **other EU policies** (especially those relating to asylum, irregular migration, borders and visas, justice and fundamental rights, employment and education, external relations, and trade). Although **no major inconsistencies** have emerged from the evaluation, there are many aspects where **more efficient interaction and complementarity with other policies** could be developed, especially with overall EU policy on growth and employment –in a context in which migration is likely to play an increasingly important role in addressing labour and skills shortages in an ageing European society – and with EU external policy.

Effectiveness

The extent to which the objectives of the legal migration *acquis* are achieved depends both on a wide range of policy and legal instruments at EU and national level and on a number of social and economic factors which go beyond implementing the *acquis*. Although it was difficult to isolate the precise impact of the legal migration *acquis* on the attainment of the overall objectives, it proved possible to identify a number of **positive effects**.

Firstly, national systems for legal migration have been **brought into line with each other to some extent** as regards the categories of third-country nationals covered, with varying degrees of harmonisation for admission conditions, procedures and rights. Secondly, the directives have had a generally positive impact on the **level of rights** granted to third-country nationals and on the protection of family life. Finally, the *acquis* has also contributed to the objective of managing economic migration flows into the EU more efficiently, so as to help address labour and skills shortages on the EU labour market, thereby contribute making the **EU more competitive overall**.

However, the same factors that have caused the coherence issues highlighted above (i.e. the sectoral approach, the existence of parallel national schemes, and the inclusion of optional clauses in the directives) have also **prevented the specific objectives from being achieved in full**. For instance, the provisions to facilitate **intra-EU mobility** under the first generation of directives are often not very different from first admission procedures and are therefore not

fully effective (though the overall impact of the intra-EU mobility rules will need to be reassessed once the more far-reaching provisions included in the later directives on intra-corporate transferees and students and researchers are implemented in full). The impact on other specific objectives, such as promoting the **integration** of third-country nationals and **preventing labour exploitation**, has also been limited, as the directives go only part of the way to addressing these issues.

While some of the obstacles that have prevented these objectives from being achieved in full go beyond the *acquis* – and some go beyond migration policy in general (relating e.g. to economic, labour market and fiscal policies; individual choices and preferences; language issues) – **there are a number of inherent shortcomings in the EU framework** (e.g. fragmentation, limited coverage of EU rules, incorrect implementation or application of the common rules). These could be addressed through measures ranging from better enforcement to, possibly, legislative measures.

Efficiency

The same challenges encountered in measuring the effectiveness of the legal migration directives (especially external factors affecting migrant flows, and the fact that determining how many economic migrants are admitted is a national prerogative) have also affected the evaluation of the directives' efficiency. The **lack of sufficient evidence to assess the precise costs and benefits** associated with implementing the legal migration directives suggests that there is a need to improve the collection of relevant data at both national and EU level.

This is why the efficiency assessment has focused on **qualitative identification** of the types of costs and benefits associated with the EU legal migration *acquis* by stakeholder, on the one hand, and on the **direct administrative costs and benefits** associated with implementing the directives, on the other (compliance costs, administrative fees payable by applicants, costs incurred by the public administration when reviewing applications, issuing permits or handling appeals. On the latter, in particular, the partial evidence available suggests that, while the costs for renewals tend to not be fully covered by the corresponding fees, for most types of permits the fees sufficiently cover the administrative costs incurred by the public administration. Overall, administrative costs for third-country nationals seem to be higher than for public authorities, which is consistent with the feedback received through the public consultation. The administrative costs for employers are also estimated to be quite high.

Finally, the assessment of the practical application of the directives has identified **different practices** in implementation by the Member States, with different levels of efficiency (e.g. simple and easily accessible application forms; clear information on permits and rights, provided in several languages; a single agency managing the application process; facilitated visa procedures). This also shows that there is **further scope for simplifying** procedures for managing legal migration flows.

EU added value

Overall, the legal migration directives have brought **positive effects** that would have not been achieved by the Member States acting alone. All stakeholders, including Member States, have confirmed **the continued EU added value of having a shared EU legal framework for legal migration**.

The main positive effects identified by the evaluation are:

- a degree of **harmonisation of conditions, procedures and rights**, helping to create a level playing field across Member States;

- **simplified administrative procedures;**
- **improved legal certainty and predictability** for third-country nationals, employers, and administrations;
- **improved recognition of the rights of third-country nationals** (namely the right to be treated on an equal basis with nationals in a number of important areas, such as working conditions, access to education and social security benefits, and procedural rights);
- **improved intra-EU mobility** for certain categories of third-country nationals (e.g. ICTs, researchers and students).

3. Follow-up

The legal migration directives evaluated in this fitness check may be considered largely ‘fit for purpose’. The fitness check identified several **positive effects** of the EU framework on legal migration, proving the **continued relevance** and **added value** of having an EU framework to regulate this field.

However, the current legal migration framework had a limited impact vis-à-vis the overall migration challenges that Europe is facing, and the fitness check has identified a number of **critical issues** in this respect. If the EU wants to achieve in full the Treaty objective of developing a common legal migration policy as a key element of a comprehensive policy on management of migratory flows, these issues will need to be addressed in future through a wide range of measures, such as:

- achieving a more harmonised and effective approach to **attract highly skilled workers** from third countries, as the Commission had proposed in the Blue Card reform;
- ensuring stronger **enforcement** of the directives, to improve their implementation and practical application – and therefore their overall effectiveness;
- promoting **information campaigns** to raise awareness of the rights and procedures established by EU legal migration instruments – this would help addressing the coherence issues with regard to the Member States’ implementation, and increasing the relevance and EU added value of these instruments;
- improving the **gathering of data, evidence and information** on the implementation of the *acquis* by supporting expert networks, research and studies, and improving the way Member States communicate statistics – this would contribute to improve the efficiency and effectiveness of the *acquis*;
- facilitating **information-sharing and cooperation between Member States**, especially in relation to the **intra-EU mobility** of third-country nationals – this would help exploiting to the fullest the EU added value and facilitate the application of the intra-EU mobility rules;
- providing Member States – through non-binding instruments – with **clarification and interpretative guidance** on applying the legal migration directives in a harmonised way – this would help addressing the identified coherence issues;
- considering putting forward **legislative measures** to tackle the inconsistencies, gaps and other shortcomings identified, so as to simplify, streamline, complete and generally improve EU legislation.