



# **Legal Migration Fitness Check**

## **Evaluation Framework**

*Annex 4A*

Written by ICF Consulting Services  
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Unit B.1 – Legal Migration and Integration

European Commission

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### *Annex 4A*

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In this section, we explain our approach to structuring and addressing the evaluation of the EU's legal migration acquis. The tables below present the evaluation framework - one for each evaluation criteria - structured around the evaluation questions that have been proposed in the draft Roadmap for the fitness check as well as those proposed in Annex IV of the study specifications. In some cases the sub-questions have been further elaborated and broken down, based on the study team's understanding of the concrete issues to be covered.

In addition to providing a full overview of the evaluation questions, the evaluation framework suggests a multiple approach in which answers to the questions can be provided through the use of judgement criteria. Judgement criteria take the form of statements which can be then confirmed or rejected by our research. The data collection and analytical methods to answer the evaluation questions using the data collected are also presented.

The starting point for the evaluation is the intervention logics already developed by the Study Team for each piece of legislation that include: the problem (relevance) informed by data analysis, the main influences on the problem (including other relevant legislation), the objectives (relevance of objectives), the inputs (main Articles), the effects on procedures (efficiency), the effects on the problem expected (relevance of means and effectiveness), and the expected EU added value.

The evidence base for the evaluation consist of the findings of Task I, II and III, as well as additional information obtained through targeted interviews (telephone or face-to-face) on specific topics.

Table 1. Evaluation Framework for assessing the relevance of the EU's legal migration acquis in Task IV

<b>RELEVANCE EQ1. To what extent are the objectives of the legal migration Directives and the way they are implemented relevant for addressing the current needs and potential future needs of the EU in relation with legal migration?</b>				
<b>Evaluation question</b>	<b>Sub-question / research question</b>	<b>Judgment criteria</b>	<b>Preliminary considerations / hypotheses</b>	<b>Key sources / evidence base</b>
<b><i>EQ1. To what extent are the objectives of the legal migration Directives and the way they are implemented relevant for addressing the current needs and potential future needs of the EU in relation with legal migration?</i></b>	<b>EQ1A.</b> To what extent were the original objectives of the legal migration Directives relevant at the time they were set and to what extent are they still relevant today?	<p>Since the Directives were put in place, what has been:</p> <ul style="list-style-type: none"> <li>-the level of demand for skilled workers?</li> <li>-the number of skilled TCN workers affected by the Directives?</li> <li>-the level of need for additional entrepreneurs to boost economic growth and create new jobs?</li> <li>-the number of TCN entrepreneurs affected by the Directives?</li> <li>-the level of demand for workers in the social care sector?</li> <li>-the number of TCN affected by the Directives working in social care?</li> <li>-the level of need for students and researchers to enhance the excellence of the EU higher education sector?</li> <li>-the number of TCN students and researchers affected by the</li> </ul>	<p><b>H-EQ1: The objectives of the legal migration Directives remain relevant in addressing stakeholder needs and the needs of the EU, but amendments are necessary to better respond to future needs (demographic, environmental, political and socio-economic needs).</b></p> <p><b>H-EQ1A_1:</b> At the time they were set, the objectives of the legal migration Directives were relevant. Following the developments in the EU integration process , the Directives responded to the need to establish a series of minimum guarantees ('a level playing field') in a number of areas, from security (to control the European Community's external border) as well as in relation to admission conditions and procedures and the rights of third-country nationals following admission. The Directives were also relevant to address the 'needs', in relation to the management of legal migration i.e. to tackle demographic changes, and labour market shortages.</p> <p><b>H-EQ1A_2:</b> The Directives remain relevant today to the extent that they respond to current needs for Member States. The Directives</p>	<p>Task I:</p> <p>Contextual analysis: Statistical overview</p> <p>Contextual analysis: Drivers for migration paper (Section 1.1)</p> <p>Intervention logics: mapping of objectives</p> <p>Contextual analysis: historical developments</p> <p>Task II:</p> <p>EU synthesis report, sections focussing on the key differences between the EU Directives and their national equivalents.</p> <p>Across the Research topics, any issues pointing at a lack of relevance of certain aspects covered by the Directive</p>

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		<p>Directives?</p> <p>-the level of demand for seasonal workers?</p> <p>-the level of need to transfer TCN workers within corporations across borders?</p> <p>-trends in the number of TCN workers arriving through regular/irregular pathways as a proportion of total inward migration?</p> <p>-the level of exploitation of TCN workers?</p>	<p>acknowledge the continuing need for migration to tackle labour market and demographic challenges. They further address integration through family reunification, which remains a key issue to be tackled.</p> <p><b>H-EQ1A_3:</b> The relevance of the Directives is impacted by drivers influencing migration patterns towards the EU. There are different drivers depending on the type of TCN: family migrants, labour migrants, students/researchers. These are a combination of socio-economic (primarily), demographic, environmental and political (security) factors in the origin and destination country or region.</p> <p>The supply of migrants / migration pressure increased due to conflicts, economic malaise, and demographic trends in third countries.</p> <p>The demand for TCN categories is impacted by these drivers e.g. the demand for students / researchers migration depends on the need in the Member States to attract students/researchers for innovation purposes, for revenue from fees etc.</p> <p>The demand for labour migration depends on:</p> <ul style="list-style-type: none"> <li>- trends in the labour market;</li> </ul>	<p>Task III:</p> <p>OPC summary and written input , section 3.1 addressing need for non-EU workers (Q77;78;82;83;85);</p> <p>OPC Synopsis, section 3.1 (interviews with national authorities for students, ecosystems; focus group with social partners</p> <p>Additional sources:</p> <ul style="list-style-type: none"> <li>- Analysis of past economic trends</li> <li>- Forecasts (JRC, DG EMPL)</li> </ul> <p>Other inputs</p> <ul style="list-style-type: none"> <li>- Review by expert panel</li> </ul>

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			<ul style="list-style-type: none"> <li>○ Labour shortages for technology skills is forecasted grow in the long term with further automatization of the economy.</li> <li>○ However, the majority of consulted employers do not consider employing non-EU workers stating as main reasons the availability of EU workforce and the difficulty to assess foreign qualifications (<i>caveat: low response rate and mainly from one MS</i>). See also similar results under the BC evaluation.</li> </ul> <ul style="list-style-type: none"> <li>– free movement within the EU;</li> <li>– impact of the economic crisis.                             <ul style="list-style-type: none"> <li>○ With regard to workers, the demand for migrants decreased following the economic crisis but is picking up again.</li> <li>○ It had also a general impact on flows (except family migration)</li> </ul> </li> </ul> <p>The demand for family migrants, is connected with the need for Member States to ensure successful integration of TCN in the society.</p>	



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			The different drivers influence current needs in relation to the management of legal migration.	
<p><b>EQ1B.</b> To what extent does the scope of the legislation match current needs in terms of the categories of TCN migrants initially intended to be covered by the legislation?</p> <p>Are certain relevant categories of third-country migrants (in terms of migration flows, labour market needs, etc.) not covered by the legislation?</p>	<p><b>EQ1B.</b> To what extent does the scope of the legislation match current needs in terms of the categories of TCN migrants initially intended to be covered by the legislation?</p>	<p>Which categories of third-country migrants are covered by the Directives?</p> <p>To what extent do the categories of third-country migrants covered by the Directives:</p> <ul style="list-style-type: none"> <li>- constitute a significant share of total legal immigration?</li> <li>-have skills which can help to address EU labour market shortages?</li> <li>-include investors who can create jobs and boost EU economic competitiveness?</li> <li>-include migrants working in 'less desirable' areas of the EU economy (e.g. agriculture, construction, domestic work)?</li> </ul> <p>Are there relevant categories of third-country migrants that are not covered by the legislation?</p> <p>To what extent is the impact of</p>	<p><b>H-EQ1B_1:</b> Overall, the Directives match the needs of certain TCN. However, the Directives show a gap, i.e. not all TCN are covered (personal scope), such as low and medium-skilled and entrepreneurs, business travellers, job seekers and certain family members under the FRD (also the assessment of Coherence in EQ2A below). Hence, the scope of the Directives does not meet the needs of TCN in terms of categories, as it excludes certain family members, the large group of low and medium-skilled workers (except for SWD) and (innovative) entrepreneurs. Those not covered could represent a substantial percentage of the total EU migrant population (see paper on statistical analysis to confirm percentage). However, many of those would fall under the SPD.</p> <p><b>H-EQ1B_2:</b> Some stakeholders argue towards streamlining the current fragmented framework (e.g. social partners, academia), whereby Member States demand a certain degree of flexibility. At the same time, some stakeholders see the need for harmonisation of the current</p>	<p>Task I</p> <p>Analysis of gaps (Task ID);</p> <p>Drivers of Migration (Section 1).</p> <p>Analysis of the intervention logics (Task IC)</p> <p>Internal coherence assessment: 1.1 personal scope of the Directive</p> <p>Task II:</p> <p>Overview of EU Directive and national statuses, including those covered by the SPD.</p> <p>EU synthesis report, sections focussing on the key differences between the EU Directives and their national equivalents.</p>

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	If so, what is the impact of such exclusion?	such exclusions significant in economic, social and political terms, and in terms of fundamental rights?	<p>Directives (e.g. academia).</p> <p><b>H-EQ1B_3:</b> The impacts of not covering several categories of TCN under EU legislation might be the following:</p> <ul style="list-style-type: none"> <li>- TCN opt for national schemes where rights might diverge across Member States, lacking harmonised rights in the EU</li> <li>- certain categories of TCN (e.g. 'innovative entrepreneurs') prefer other regions than the EU</li> </ul> <p>Possible remedies could be to introduce optional rules in the Directives to address the gaps in TCN categories.</p>	<p>Task III:</p> <p>OPC summary and written input , section 3.1 addressing reasons for entering the EU (Q15,16);</p> <p>OPC Synopsis, section 3.1 (interviews with national authorities for students, ecosystems on importance of certain categories of TCNs, focus group with social partners on exclusion of categories, EMF addressing relevance of the fragmented framework for different groups of TCNs</p>
	<b>EQ1C.</b> To what extent does the scope of the Directives, and the way it is implemented, meet the current needs in all the different	<p>To what extent do the material provisions of the Directives , and the way they are implemented, meet the needs of:</p> <p><i>Pre-application phase:</i></p> <p>-prospective applicants to be informed about the possibilities for migration to the EU? (Are there</p>	<p><b>H-EQ1C_1:</b> Several provisions of the Directives are fit for purpose across the phases (e.g. equal treatment).</p> <p><b>H-EQ1C_2:</b> The provisions of the Directives do not fully meet the needs of TCNs across the different phases, as there are several incoherent provisions across the Directives. There are several application issues across the phases impacting the relevance of the Directives (e.g.</p>	<p>Task I:</p> <p>Internal coherence assessment: examining main inconsistencies per topic.</p> <p>Task II:</p> <p>EU synthesis report: all Phases with a particular</p>

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	<p>steps of the migration process, and in all aspects of migration?</p> <p>Identify if specific legal provisions are missing (or could be better developed) for specific categories of third-country nationals (currently covered or not covered by the EU legal migration instruments).</p>	<p>different types of information channels? Is the amount of information provided sufficient? Is the information provided in a timely fashion? Is the information provided easy to understand?)</p> <p><i>Preparation phase:</i></p> <ul style="list-style-type: none"> <li>-prospective applicants (or employers/research institutes/sponsors) for clear instructions as regards documents which need to be collected in order to apply for admission under different Directives?</li> </ul> <p><i>Application phase:</i></p> <ul style="list-style-type: none"> <li>-prospective applicants for the application procedure to be accessible and speedy?</li> <li>-national authorities for application procedures that permit checks on the validity of the application?</li> </ul> <p><i>Entry and travel phase:</i></p> <ul style="list-style-type: none"> <li>-TCNs for legal certainty and swift</li> </ul>	<p>phase 2 income requirements, phase 5 duration of permits, phase 6 integration requirements, phase 7 intra-EU mobility). However, this is not the case in all conditions across phases (see internal coherence assessment paper).</p> <p><b>H-EQ1C_3:</b> Current conditions for entry, residence, and access to the labour markets in EU countries are too restrictive for TCNs, in terms of requested documents, procedures in the different MS as well as regulations for equal treatment etc. Evidence collected point to the direction that currently there is a fragmentation of rights between different third country nationals based on skills level and the needs of stakeholders are not addressed sufficiently in some cases e.g. family reunification. In addition, more emphasis should be in reinforcing equal treatment.</p> <p><b>H-EQ1C_4:</b> Information provisions on entry and stay conditions are not easily available (although stakeholders differ in their views).</p> <p>TCNs are not aware of all available schemes. In some MS, the national scheme will be automatically referred to and they are not aware that there is an EU scheme as an option.</p> <p>Access to information on legal migration needs</p>	<p>focus on whether the material provisions meet the needs of third-country nationals, thus identifying any practical application and other issues encountered.</p> <p>EU synthesis report, sections focussing on the key differences between the EU Directives and their national equivalents.</p> <p>Task III:</p> <p>OPC summary and written input , section 3.1 addressing views across the profiles on specific rules and conditions to enter and reside in the EU; (Q 17, 23; 26; 27; 84; 91,92; 95; 102; 107) .</p> <p>OPC synopsis, section 3.1 (interviews with national authorities for students on relevance of the new S&amp;R Directive, Member States</p>

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		<p>administration?</p> <p>-administrative authorities to ensure security and orderly administration?</p> <p><i>Post-application phase:</i></p> <p>-TCNs and MS authorities for legal certainty, efficiency and speed as regards the delivery of residence permits?</p> <p><i>Residence phase:</i></p> <p>-TCNs for legal certainty, flexibility (e.g. as regards change of status, renewals, etc.), information/transparency, access to labour market, equal treatment during residence in the EU? In particular, to what extent do the equal treatment rules and enforcement mechanisms for equal treatment pay and working conditions help to counteract exploitation?</p> <p>-employers for information, flexible labour supply, efficient processes for recruitment?.</p>	<p>to be modified because available information is oftentimes difficult to access and too technical. What is also missing is comparative information and comparison to EU permits. The information on the EU Immigration portal is patchy and in some cases not up-to-date.</p> <p><b>H-EQ1C_5:</b> Other factors beyond the migration legislation need to be taken into account, e.g. entrepreneurs to get bank account, get a lease, etc. All of these formalities that are not seen as purely immigration related, but create a barrier for access to the immigration scheme.</p>	<p>Hearing on relevance of the Directives, EMF on the implementation of the FRD, EESC on the implementation of the Directives)</p>

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		<p>-national authorities for information, compliance with standards, etc?</p> <p><i>Intra-EU mobility phase</i></p> <p>-eligible TCNs legally resident in one MS for simple, inexpensive and swift access to residence permits in a second Member State?</p> <p><i>End of stay phase</i></p> <p>-TCNs wishing to return to a third country for support in order to accomplish this? (e.g. information about how / whether certain acquired rights can be 'exported' ; exportability of such rights; timeline for 'tolerated' absences from the MS without loss of residence permit/rights); procedures and conditions in place for circular migration).</p> <p>-national authorities for clear and feasible procedures to prevent / sanction TCNs who deliberately overstay and transition into</p>		

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		irregularity?		
	<b>EQ1D.</b> Are there certain obsolete measures (legislative/non-legislative) associated with the EU's legal migration Directives?	<p>Have certain EU measures (legislative / non-legislative) associated with the legal migration Directives become obsolete (i.e. MS have no use for them) or not:</p> <ul style="list-style-type: none"> <li>-Measures to do with admission conditions;</li> <li>-Measures to do with admission procedures;</li> <li>-Measures relating to rights (e.g. to what extent has the 'may clause' allowing MS to restrict for one year the right to equal treatment for family members of TCN in access to employment been used?).</li> </ul>	<p><b>H-EQ1D_1:</b> No obsolete measures are identified, may clauses are applied in nearly all cases by multiple MS.</p> <p><b>H-EQ1D_2:</b> Directives are seen as relevant, but Member States emphasise the need for simplification as well as flexibility in the implementation at national level.</p>	<p>Task I Historical Overview (Task IB)</p> <p>Task II: Structured legal analysis: identification of relevant 'may' clauses and extent to which these have been transposed by Member States or not.</p> <p>Task III: OPC summary and written inputs, section 3.1. addressing views across the profiles on specific rules and conditions to enter and reside in the EU;</p>

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				(Q 17, 23; 26; 27; 84; 91,92; 95; 102; 107)  Task III synthesis, section 3.1 ( Member States Hearing on relevance of the Directives)
	<b>EQ1E.</b> To what extent is the way that Member States implement the Directives relevant to the initial objectives, and to current needs?	Which options ('may clauses') do the Directives make available to the Member States?  How have Member States applied the options? (e.g. more than 2/3 of Member States are applying strong restrictions).  To what extent have the choices of Member States (vis-a-vis the options) reduced / increased the ability (relevance) of the Directives to meet their initial objectives? (see effectiveness question EQ 5A);  To what extent have the choices made by Member States reduced / increased the ability (relevance) of the Directives to address current	<b>H-EQ1E_1:</b> Some may clauses make implementation of Directives fragmented across Member States (e.g. differences in equal treatment regarding social benefits and intra-EU mobility, differences in scope regarding categories of family members covered, the extent to which unremunerated trainees, volunteers and pupils are covered, etc.).  <b>H-EQ1E_2:</b> Several practical implementation and conformity issues may go against the initial objectives of the Directives (e.g. conformity issues with regard to the single procedure required by the SPD, MS exceeding application deadlines, issues with export of social security benefits ; see <i>Task II synthesis report</i> ).  <b>H-EQ1E_3:</b> Member States agree on the relevance, but note that they are not in favour of adopting new (additional legislation).	Task I: Historical Overview (IB) Internal coherence assessment: identification of inconsistencies which may hamper the overall achievement of the EU legal migration acquis.  Task II: EU synthesis report: identification of practical application and other issues which may go against the objectives of the Directives  Structured legal analysis: identification of 'may' clauses and extent to which these have been

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		EU needs in relation to legal migration? (as defined in relevance question EQ 1D).		transposed by Member States or not. Task III: OPC summary and written input section 3.1 addressing questions on differences in the rules between EU MS (Q 70; 94; 104) Task III synthesis, section 3.1 (Member States Hearing on relevance of the Directives)
	<b>EQ1F.</b> To what extent are the provisions of the Directives, and the way these are implemented, relevant in view of future challenges?	To what extent have the choices made by Member States reduced / increased the ability (relevance) of the Directives to address future EU challenges in relation to legal migration?	<b>H-EQ1F_1:</b> Future challenges at EU level are predominantly demographic challenges coupled with labour shortages in some sectors. Demographic change and other factors might contribute to higher migration pressure towards the EU (see paper on drivers). Future projections anticipate further labour shortages / increased need for migrants, in particular in certain sectors (polarisation of the labour market). Global competition for skills and talent will increase. Other (tbc in drivers)	Analysis of future needs in forecast studies; Task I: Drivers of migration (Section 1.3) Task II: EU synthesis report: identification of Member State approaches to the practical application of the EU Directives and their



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			<p><b>H-EQ1F_2:</b></p> <p>Current admissions procedures and conditions; intra-EU mobility for BCD/ICT/S&amp;RD/RD are too stringent; often national schemes offer more attractive conditions.</p> <p>Several implementation issues may affect relevance in view of future challenges (i.e. issues with recognition of <b>diplomas</b>, issues with the facilitation of intra-EU mobility, with exporting benefits).</p> <p><b>H-EQ1F_3:</b> Stakeholders (civil society) see the need to further develop the Directives in light of managing migration but also ensuring equal treatment and combating labour exploitation. Specifically, Member States see the need for more flexible transposition.</p>	<p>national equivalent schemes which reflect consideration of future challenges.</p> <p>Task III</p> <p>Synthesis</p>

### 1.1.1.1 Coherence

The Evaluation questions related to the coherence criterion focus on two main aspects:

- Internal coherence, which examines how well the objectives of the legal migration Directives produce complementarities and synergies or on the contrary – result in overlaps, inconsistencies or gaps. This is grasped by the following question:
  - **EQ2: To what extent are the objectives of the legal migration Directives coherent and consistent and to what extent are there inconsistencies, gaps and overlaps? Is there any scope for simplification?**
- External coherence, which captures how the legal migration Directives are complementary or overlapping with national level migration legislative frameworks (national policy coherence) and other EU policies (EU policy coherence). This is tackled by the two following questions:
  - **EQ3: To what extent are there inconsistencies, gaps, overlaps and synergies between the existing EU legislative framework and national level migration legislative frameworks? Is there any scope for simplification?**
  - **EQ4: To what extent are the Legal migration Directives coherent with other EU policies and to what extent are there inconsistencies, gaps, overlaps and synergies with such policies?**

EQ4 is the broadest question as there are numerous EU policies and interventions which interact with the operation and outcomes of the legal migration Directives: from the EU's policy on combatting irregular migration to EU policy on the recognition of foreign qualifications, on social security coordination, free movement, trade and education/research.

While the evaluation of coherence will cover all the legal migration Directives, certain sub-questions i.e. those focusing on the way Member States implement the Directives, will of course only be addressed in relation to the Directives which have already been implemented.

The judgment criteria, and methodology proposed to answer these questions are presented in the table below. The data needed to answer EQ2, EQ3 and EQ4 will largely be obtained through the analysis conducted in respect of EQ1.

Table 2. Evaluation Framework for assessing the coherence of the EU's legal migration acquis in Task IV

<b>COHERENCE</b> <b>EQ2: To what extent are the objectives of the legal migration Directives coherent and consistent and to what extent are there inconsistencies, gaps and overlaps? Is there any scope for simplification?</b> <b>EQ3: To what extent are there inconsistencies, gaps, overlaps and synergies between the existing EU legislative framework and national level migration legislative frameworks? Is there any scope for simplification?</b> <b>EQ4: To what extent are the Legal migration Directives coherent with other EU policies and to what extent are there inconsistencies, gaps, overlaps and synergies with such policies?</b>				
Evaluation question	Sub-question / research question	Judgment criteria	Preliminary considerations / hypotheses	Key sources / evidence base
<b>EQ2: To what extent are the objectives of the legal migration Directives coherent and consistent and to what extent are there inconsistencies, gaps and overlaps? Is there any scope for simplification?</b>	EQ2.A (Internal coherence). Based on a comparative legal analysis of the EU Directives in force, identify gaps, overlaps and inconsistencies (if any). Are the legal acts coordinated and complementary?  Identify synergies and cumulative impacts.	To what extent are the Legal migration Directives coherent and complementary in their approach to: <ul style="list-style-type: none"> <li>-Admission conditions;</li> <li>-Admission procedures;</li> <li>-Format of permit;</li> <li>-Equal treatment;</li> <li>-Access to work;</li> <li>-Right to family reunification;</li> <li>-Intra-EU mobility;</li> <li>-Right to cumulate residence periods to qualify for LTR;</li> <li>-Others protections.</li> </ul>	<b>H-EQ2A_1:</b> Different types of inconsistencies have been identified, which can be summarised as: <ul style="list-style-type: none"> <li>Inconsistencies in terminology used in the Directives for the same concepts</li> <li>Differences in provisions which cannot be (fully) justified by their nature / migrant category covered (e.g. differences in time limits for decision-making, for notification, etc.).</li> <li>Differences which can be justified by the nature of the Directive and the category of migrant covered.</li> </ul> There is scope for harmonisation in particular with regard to the first two categories, as well as some political willingness.  At a practical level some national legislations have already streamlined some of the inconsistencies, for example by adopting a single Aliens Act. Others do cause some practical problems (e.g. very long waiting times for permit applications, long duration between the notification of the decision and the actual permit, etc.). In others, also with the existence of national schemes, differences are worsened.	Task I:  Analyses of gaps / overlaps (I-D)  Internal coherence assessment: identification of overlaps in personal and material scope and analysis of main coherence issues, inconsistencies and synergies.  Task II:  EU synthesis report: analysis of whether coherence issues and inconsistencies may negatively impact admission and rights of certain categories of TCN (it is to be checked whether such analysis can be done on the basis of the available

Is there any evidence of overlaps in the personal scope of the legal migration Directives i.e. can similar categories of TCNs apply to enter or stay in the EU on the basis of different EU legal migration Directives? (e.g. family members of TCNs, high skilled TCN workers, etc.).

Is there any evidence of inconsistencies in the material scope of the legal migration Directives? e.g. are there unreasonable differences in the standards of protection which apply to similar categories of TCN applying to enter or stay in the EU on the basis of the different EU legal migration Directives?

Is there any evidence of synergies between the legal migration

**H-EQ2A\_2:** As discussed under Relevance, there are gaps in the personal scope of the legal migration Directives in the sense that -- a) certain categories are not covered at all and b) some covered categories do not benefit from the same rights (e.g. inactive family members have no right to equal treatment under the SPD).

As to a) above, TCNs not covered by the current legal migration Directives, include for example investors, low and medium-skilled workers who are not seasonal workers, highly mobile transport workers, entrepreneurs / self-employed, service providers, third-country nationals benefiting from national forms of protection and those who cannot be returned, family members of non-mobile EU citizens, post-secondary students, trainees who are not studying or who are not in the possession of a university degree.

There are also some overlaps (e.g. researchers which may be covered under the SD and BCD).

**H-EQ2A\_3:** Consultation shows that some stakeholder groups would be in favour of expanding the personal scope of the Directives (e.g. TCN, NGOs) while others overall do not want additional categories of migrants to be covered (e.g. MS authorities).

**H-EQ2A\_4:** there are some synergies between the Directives, such as the example mentioned of the BCD as well as the equal treatment provisions of the SPD.

**H-EQ2A\_5:** there also a few cases in which the same or similar terminology is used for different concepts, e.g. trainees under the ICT and S&RD, which may be confusing.

evidence)

Task III:

OPC summary and written input section 3.2 addressing questions on gaps of categories and on Family Reunification (Q 11; 14); questions on complementarity in admission conditions/procedures(Q35-40)

Task III synthesis, section 3.2 (NGO Hearing on gaps in categories; MS Hearing on inconsistencies, expert workshop on gaps in categories and gaps/inconsistencies)

	<p>Directives? e.g. do the provisions of some of the Legal migration Directives strengthen the effectiveness of other Legal migration Directives (e.g. EU Blue Card allows countries to cumulate prior residence periods in one MS to qualify for EU LTR in another).</p>		
<p>EQ2.B Based on comparative legal analysis, identify if there is scope for simplification</p>	<p>Would it be feasible /desirable to simplify the EU's Legal migration Directives in order to minimise / prevent gaps, overlaps and inconsistencies in any of the following areas:</p> <ul style="list-style-type: none"> <li>-Admission conditions;</li> <li>-Admission procedures;</li> <li>-Form of permit;</li> <li>-Equal treatment;</li> <li>-Access to work;</li> <li>- Rights of family</li> </ul>	<p><b>H-EQ2B_1:</b> Several opportunities for simplification have been identified – mostly related to inconsistencies in terminology and those that do not appear to be justifiable by the scope / aims of the Directives. These include (a non-exhaustive list):</p> <p><i>Issues of terminology</i></p> <ul style="list-style-type: none"> <li>Introducing similar descriptions of sickness insurance</li> <li>Using the same definitions for public health, safety and security</li> <li>Streamlining the definition of professional qualifications</li> <li>Adding the obligation to notify the right to redress to the FRD</li> <li>Realigning equal treatment terminology</li> <li>Harmonise (some) rejection grounds, e.g. if a business does not have any economic activity taking place, or has been established for the purpose of facilitating the entry of third-country nationals.</li> </ul>	<p>Task I:</p> <p>Internal coherence assessment: analysis of scope for simplification to address the coherence issues and inconsistencies identified.</p> <p>Task II:</p> <p>Structured legal analysis: analysis of extent to which 'may' clauses could either be compulsory or considered obsolete</p> <p>Structured legal analysis: extent to which major conformity issues (e.g. encountered by &gt; 5 MS) provide scope for simplification.</p>

<p>members</p> <ul style="list-style-type: none"> <li>-Right to family reunification;</li> <li>-Intra-EU mobility;</li> <li>-Right to cumulate residence periods to qualify for LTR;</li> <li>-Others protections.</li> </ul> <p>To what extent do key stakeholders consider it feasible (from a political, financial and administrative standpoint) to simplify the Legal migration Directives?</p>	<p><i>Substantive issues</i></p> <ul style="list-style-type: none"> <li>Clarification of the right to stay</li> <li>Adding the same information obligations and specifying the type of information to be provided</li> <li>Streamlining of who can lodge the application</li> <li>Streamlining time limits for notification of a decision (also in case of renewals)</li> <li>Adding the same obligations to notify TCN of a decision</li> <li>Clarifying administrative silence</li> <li>Including a reference to fees having to be reasonable</li> <li>Reviewing whether some differences in equal treatment provisions depending on the TCN category can be removed as they cannot be justified.</li> <li>Reviewing whether different periods for short and long-term intra-EU mobility can be more streamlined.</li> <li>Streamline the mandatory requirements to apply for or to notify long-term mobility.</li> <li>Streamline documentary evidence required for long-term and short-term mobility</li> <li>Address inconsistencies in long-term and short-term mobility rights of family members</li> <li>Streamline approach to rejection grounds of long-term mobility applications</li> <li>Add safeguards protecting the applicant of the arbitrary application of the rejection grounds based on being a threat to public policy, public security or public health.</li> <li>It is important to bear in mind however that some of the issues above concern general legal aspects (e.g.</li> </ul>	<p>Task III:</p> <p>OPC summary and written input section 3.2 addressing questions on improvement of the acquis (Q101)</p> <p>Task III synthesis, section 3.2 (NGO Hearing and Member States Hearing on simplification, EESC)</p>
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administrative silence) which apply to all situations in an MS, hence difficult to change.

**H-EQ2B\_2:** As mentioned above, Member States show some interest in simplification, e.g. addressing inconsistencies in terminology and a few 'illogical' inconsistencies, but are less interested in streamlining provisions which would give more rights to certain categories of TCN.

**H-EQ2B\_3:** There may be scope to consider an "SPD plus", i.e. a single Directive covering different forms of labour migration, with separate annexes for each status.

**H-EQ2B\_4:** There are clear historical and contextual developments which explain the inconsistencies between the Directives, as well as the failure of the first single migration directive. However, as mentioned also above, several MS have migration codes hence already a framework approach in place.

**EQ3: To what extent are there inconsistencies, gaps, overlaps and synergies between the existing EU legislative framework and national level migration legislative frameworks? Is there any scope for simplification?**

EQ3.A: (National policy coherence) Which national policy choices have played a key role in the management of migration flows?

What national policy choices have Member States made in the area of legal migration? For example, as regards:  
 --Types of admission conditions (e.g. integration requirements, salary thresholds, 'sufficient resources' requirements);  
 -Types of application procedures (standard application forms,

**H-EQ3A\_1:** Some gaps in the personal and material scope have been identified (see EQ1 and 2 above).

**H-EQ3A\_2:** National policy choices as to a) the adoption of more restrictive 'may' clauses and b) the interpretation and 'operationalisation' of some provisions in the Directives have led to further divergences in practice.

Key differences (a non-exhaustive list) include:

- The type of information provided upon request on the application procedure
- The different steps in the application process / authorities involved
- The fees charged
- The time limits for deciding on an application

Task I:

Preliminary analysis of gaps (Task I-D)

Task II:

EU synthesis report: analysis of MS practical application choices and extent to which these could be further reflected in the Directives (or lead to removal of provisions)

EU synthesis report, sections focussing on the key differences between the EU Directives and their

<p>maximum processing times, fees, etc.);</p> <ul style="list-style-type: none"> <li>-Use of caps / quotas to control the number of economic migrants;</li> <li>-Use of labour market tests;</li> <li>-Restrictions on the right to work (e.g. restricted to a single employer, to a particular sector, etc.)</li> <li>-Persistence of national parallel schemes (and their respective approach to the issues listed above)</li> <li>-‘Gold plating’ (going beyond the provisions of the Directives).</li> </ul>	<ul style="list-style-type: none"> <li>- The use of pre-integration measures and integration requirements</li> <li>- Documentary evidence requirements (not just what is requested but how, e.g. translated, certified)</li> <li>- The complexity of the application forms</li> <li>- Procedures for recognition of diplomas</li> <li>- Arrangements as to who can submit the application and from where</li> <li>- Procedures for obtaining the residence permit when a positive decision has been reached.</li> <li>- Registration procedures for TCN upon arrival in the MS</li> <li>- Duration of the first permit</li> <li>- Renewal conditions and procedures</li> <li>- Possibilities and procedures for change of status</li> <li>- Provision of facilitations for intra-EU mobility</li> <li>- Application / notification regimes for mobility.</li> </ul> <p><b>H-EQ3A_3:</b> The existence of a wide variety of national schemes in the MS also contributes to incoherence between EU MS.</p> <p><b>H-EQ3A_4:</b> For TCN, it is mostly the accumulation of MS implementation choices that they find most problematic. For employers, for whom time and speed are of essence, there are specific aspects which they find particularly difficult, e.g. the different approaches towards birth certificates or certification of diplomas. However, for smaller companies the collective weight of the inconsistencies may also act as a significant obstacle.</p> <p><b>H-EQ3A_5:</b> Another problem is the way the national</p>	<p>national equivalents.</p> <p>Structured legal analysis: analysis of transposition of ‘may’ clauses by MS</p> <p>Task III Task III synthesis, section 3.2 (expert workshop on external coherence)</p>
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implementation choices are being carried out by MS administrations in the national territory and in embassies and consulates abroad, as many lack capacity and knowledge of the specific EU statuses.

<p>EQ3.B: To what extent are there synergies, gaps, inconsistencies, incoherencies, overlaps with national policies that are either going further than what is required by the EU legal migration directives ("gold plating") or exist in parallel (parallel schemes)?</p>	<p>To what extent do the national policy choices made by MS:</p> <ul style="list-style-type: none"> <li>-help to enhance the ability of the legal migration Directives to reach their original objectives;</li> <li>-create overlaps with the provisions of the legal migration Directives?</li> <li>-result in gaps in legal coverage / protection for certain categories of migrants?</li> </ul>	<p><b>H-EQ3B_1:</b> some MS have made policy choices which have enhanced the ability of the legal migration Directives to reach the original objectives, but in others the choices may have hampered the achievement of the objectives – especially when a particularly restrictive approach has been chosen through 'may' clauses and strict interpretation of clauses.</p> <p><b>H-EQ3B_2:</b> while legally possible, the fact that MS have taken different approaches to the inclusion of school pupils, volunteers and unremunerated trainees means that in some MS they are covered by the <i>acquis</i> and in others they are not. The same applies to certain categories of family members.</p> <p><b>H-EQ3B_3:</b> national schemes overlap with the provision of the legal migration Directives – some offer more favourable conditions than the EU equivalent, others a mix of favourable and less favourable ones.</p>	<p>Task I: Statistical analysis Preliminary analysis of gaps (Task I-D)</p> <p>Task II: EU synthesis report: analysis of MS practical application choices and extent to which these have led to overlaps, gaps, contradictions and/or enhanced achievement of objectives.</p>
<p>Are there excessive burdens as a result of national implementation choices?</p>	<p>-contradict any of the provisions in the legal migration Directives?</p> <p>Have certain national policy choices created significant administrative costs, in particular those choices involving:</p> <ul style="list-style-type: none"> <li>-Retention of national</li> </ul>	<p><b>H-EQ3B_4:</b> the retention of national schemes has led to additional administrative costs for MS but there is very little political will to abandon national schemes.</p> <p><b>H-EQ3B_5:</b> MS consider that national schemes are more flexible in the sense that they are easier to modify and adapt to emerging needs. In this regard, for example, they can cover newly emerging forms of employment contracts, employer-employee relations, self-employment, etc.</p>	<p>EU synthesis report: identification of more favourable provisions and parallel schemes (reviewing cases in which these also offer more favourable conditions and rights).</p> <p>Task III Task III synthesis, section 3.2 (expert workshop on external coherence)</p>

parallel schemes;

**EQ4: To what extent are the Legal migration Directives coherent with other EU policies and to what extent are there inconsistencies, gaps, overlaps and synergies with such policies?**

EQ4.A (EU Policy coherence): Building on the analysis of EQ2, which other EU interventions (policies and legislation) have a role in the management of migration flows?

Are there synergies, gaps and incoherencies, overlaps?

To what extent has the management of migration flows been influenced by other EU interventions (policies and legislation), including those relating to:

- Recognition of foreign qualifications;
- Asylum;
- Social security coordination;
- Free movement;
- Equal treatment;
- Posted workers;
- Trade;
- Integration;
- Education and research (including funding programmes such as Erasmus Mundus and Marie Curie);
- External policies
- Etc.

**H-EQ4A:** Several external coherence issues have been identified, a few examples of which are listed below.

**Recognition of qualifications**

The main gap in the recognition of professional qualifications occurs in the application phase, since no EU legal provisions cover the efforts of TCN applicants to obtain recognition of the professional qualifications they may have obtained in a third-country or in another EU Member State. Also, during the Intra EU mobility phase, TCNs would not be covered by the equal treatment until they have been granted a residency permit in the second Member State, hence there is a potentially serious gap in the preparation phase (often entailing job-seeking) for intra-EU mobility.

**Social security**

There are several gaps in the EU acquis affecting the right of third-country nationals to transfer their pensions when they move 'back' to a third-country. The portability of statutory pensions for third-country nationals who have worked in the EU is included in almost all of the EU legal migration Directives (except for the long-term residents Directive, where it is arguably still implicit). However, since this right derives from an equal treatment provision, it depends on the existence of such a right for the nationals of the Member State.

**Free movement**

EU policy on freedom of movement interacts in a number of ways with the management of legal migration. The main

Task I:

External coherence (Task I-C)

Key issues (Task I-D)

Internal coherence assessment: analysis of interplay with other EU legislation (e.g. Directive 2005/36/EC)

Task III:

OPC summary and written input section 3.2 addressing questions on other policies (Q97-100)

Task III synthesis, section 3.2 (Interviews with authorities for students, Member States Hearing on relevance of the Directives)

To what extent are there inconsistencies, gaps, synergies between the provisions of the Directives (e.g. on equal treatment, on recognition of qualifications, on family reunification, etc.) and relevant provisions in the above listed EU interventions?

aspect of this interaction concern the intra-EU mobility rights of third-country nationals compared to the ones of EU citizens. Formally, the differences in treatment between EU citizens and TCNs in relation to mobility rights does not give rise to coherence issues, because the freedom of movement of EU citizens is a 'constitutional right' (Art 21 and 45 of the TFEU) whereas the right to intra-EU mobility for third-country nationals is based on secondary legislation and therefore subject to the will of the legislature.

However, a significant **gap** has been identified between the provisions on third-country family members (covered by of Directive 2004/38/EC) who join mobile-EU citizens and the third-country family members who join TCN, and are therefore covered by legal migration Directives, namely the non-coverage by EU law of third-country national family members of non-mobile EU citizens. This category of TCN cannot be covered under free movement rules since the application of the Treaty provisions on EU citizenship is conditioned on the existence of a cross-border element. Third country nationals who are family members of static EU citizens are not included, as a specific category, by the legal migration Directives as these concern family reunification rules applicable to third country nationals. However, the judgements of the CJEU on returning nationals confer Union citizens who return to their Member State of origin similar rights to family reunifications than the ones attributed by secondary legislation to Union citizens who reside in another Member State.

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#### **Human trafficking**

It is not clear whether TCN who have obtained a residence permit under Directive 2004/81/EC can include their period of residence within the minimum time required to be

eligible for long-term residence status.

The focus of Directive 2011/36/EU on cases of exploitation which take place in the context of but there is no obligation derived from EU legislation on Member States to develop common measures to combat other forms of labour exploitation, including breaches of migration or employment law which may disproportionately affect certain categories of legally residing third-country nationals, such as students or family members in employment situations.

### **Exploitation**

The current EU legislation protecting migration from various forms of labour exploitation or trafficking covers well legally residing third country nationals. Risks are higher about third country nationals involved in illegal employment or undeclared work. Sanctions for employers are strict. Guarantees for victims of exploitation who speak against employers are not sufficiently developed. The equal treatment provisions that have been included in the legal migration Directives are necessary to begin the process of preventing and addressing situations where the working conditions of third-country nationals deviate significantly from the standard working conditions as defined by legislation. Moreover, the legal migration Directives – except the Seasonal Workers Directive - do not require Member States to establish monitoring mechanisms, nor sanctions against employers who do not comply with the provisions on equal treatment. Also, only one of the EU migration directives (the Seasonal Workers Directive) specifically addresses risks of exploitation.

### **Employer sanctions**

The exclusion of legally residing third-country nationals from the scope of the Employer Sanctions Directive creates

two significant gaps in the EU's measures to counter illegal employment and exploitation. Their exclusion means that the equality provisions contained in the EU legal migration Directives, which aim to combat illegal employment by putting legally residing third-country nationals on an equal footing to national workers, are not backed up in all Legal migration Directives by a regime of monitoring and inspections, and reporting thereof, as well as sanctions against employers. Also, the obligation on employers to pay any outstanding remuneration to workers who have been illegally employed only extends to illegally staying third-country nationals (with the exception of seasonal workers, for whom a right to receive back-payments is included in the Seasonal Workers Directive).

#### **Temporary work**

There are some potential significant gaps in personal scope between the provisions on equal treatment of the Directive on Temporary Agency Work (2008/104/EC) and the legal migration Directives. These gaps result from the exclusion of certain categories of third-country nationals from the scope of the Single Permit Directive (in particular self-employed workers and posted workers).

Another potential significant gap concerns third-country nationals who are contracted to work in the EU by a temporary work agency based outside of the EU, as these are also not covered by the protections contained in the Temporary Agency Work Directive.

#### **Education**

The legal migration Directives provide synergies in respect of the EU skills agenda and external education policy, since they aim to simplify and harmonise admission conditions and procedures for third country nationals with different key skill sets. However, several potential inconsistencies

were identified including the variety of admission conditions and procedures permitted by the Directives, which may discourage skilled third-country nationals from coming to the EU.

### **Fundamental rights**

TCN can only rely on the scope of non-discrimination rules as referred to in EU secondary legislation. Case law of the CJEU and ECtHR interpreting provisions of the Charter and of EU law expand the scope of fundamental rights guarantees of third country nationals on certain issues, such as social benefits and family reunification.

### **Stakeholder views on external coherence**

Contributions from the stakeholders were very limited and mainly referred to an overlapping between asylum and legal migration acquis, and family reunification rules in the Dublin Regulation. Specifically Member State representatives indicated that EU policies, including education and research (including funding programmes such as Erasmus+, (former) Erasmus Mundus and Marie Skłodowska Curie Actions) and recognition of foreign qualifications play a role in the management of migration flows advocating for a better coherence between these policies and the legal migration acquis. Finally, the stakeholders indicated overlaps and inconsistencies between national schemes and the EU Directives, noting that in some cases the national schemes might be more favourable for the TCN (experts, Member States).

### **1.1.1.2 Effectiveness**

Effectiveness refers to the extent to which objectives have been (or are likely) to be achieved. Questions addressing the effectiveness of EU interventions also endeavour to determine the extent to which the effects achieved were the result of the EU interventions, or other factors. Four separate evaluation questions are to be addressed in this section:

**EQ 5: To what extent have the objectives of the legal migration Directives been achieved?**

**EQ 6: What have been the effects of the legal migration Directives, and to what extent can such effects be attributed to the EU intervention?**

**EQ 7: To what extent do the observed effects of the implementation of the Directives correspond to their objectives?**

**EQ 8: To what extent did different external factors influence the achievement of the objectives?**

The study specifications indicate that these questions should only be addressed in respect of those legal migration Directives that have been implemented for at least 3 years at the start of the study. This concerns three Directives: the LTR Directive, the Directive on Family Reunification and the Single Permit Directive. The EU Blue Card Directive will only be addressed partially in this section by drawing on the results of the recent evaluation and impact assessment. The Directives on Students and on Researchers (prior to their recast) will also be partially addressed, drawing on earlier implementation reports and the IA on the recast Student and Researchers Directive.

EQ 5, 6, 7 and 8 will be addressed by taking further the analysis outlined with respect to EQ1. Again the analysis will be conducted Directive by Directive. Assessments of the extent to which the objectives have been achieved (EQ5) will be informed, firstly, by the comprehensive literature review undertaken in Task I, to identify changes in the management of migration at national level, and to identify the effects of these changes at macro (economic) level. EQ5 will also be informed by targeted consultations with key stakeholders, to determine their views / levels of satisfaction with migration policy. The attribution question (EQ6) will be addressed using trend analysis: i.e. by looking at total flows (and effects) over time in each category and flows linked to the Directives. The evidence base for EQ7 will build on the analysis of relevance undertaken for EQ1, because when considering relevance we will be separating considerations of relevance of objectives and relevance of means: if the means (the provisions of the Directives) are not relevant to the objectives, the effects of the implementation of the Directives are also not likely to correspond to the objectives. EQ8 will largely be informed by careful development and analysis of intervention logics of the legal migration Directives.

The judgement criteria and methodology proposed to answer each of the effectiveness questions are presented in the table below

Table 3. Evaluation Framework for assessing the effectiveness of the EU's legal migration acquis in Task IV

<b>EFFECTIVENESS</b> <b>EQ 5: To what extent have the objectives of the legal migration Directives been achieved?</b> <b>EQ 6: What have been the effects of the legal migration Directives, and to what extent can such effects be attributed to the EU intervention?</b> <b>EQ 7: To what extent do the observed effects of the implementation of the Directives correspond to their objectives?</b> <b>EQ 8: To what extent did different external factors influence the achievement of the objectives?</b>				
Evaluation question	Sub-question / research question	Judgment criteria	Preliminary considerations / hypotheses	Key sources / evidence basis
<i>EQ 5: To what extent have the objectives of the legal migration Directives been achieved?</i>	EQ 5A: Identify the extent to which the objectives of the legal migration Directives/policy been achieved, as concerns :  <i>Overall objectives</i> -Effective management of migration flows; -Fair treatment of third-country nationals, also contributing the integration;	To what extent have the Member States approximated their admission conditions and procedures for the categories of TCN covered by the Directives?  To what extent do employers / recruitment agencies consider that it has become easier to recruit (highly qualified) third-country workers following the adoption of the Directives?  To what extent do the categories of TCN covered by the Directives consider that it has become easier to apply for a work and residence	<b>H-EQ5A_1:</b> Although the objectives of the legal migration acquis differ depending on the category of migrants (hence objectives differ from Directive to Directive), the underlying rationale for the legal migration Directives is the need to approximate the regulation of migration from third countries for the purpose of work, living and studying in the EU.  <b>H-EQ5A_2: Re Objective Harmonisation as an overarching goal of the legal migration acquis</b>  Harmonisation of the regulation and equal level playing field of (i) admission conditions; (ii) procedures and (iii) rights is an underlying objective of the EU legal migration acquis as a whole. Introducing more uniform migration rules through the implementation (the legal transposition and practical application) of the Directives is aimed to increase the EU's attractiveness	Task I: Statistical analysis Drivers of migration  Task II: EU synthesis report: all Phases with a particular focus on responses to experiential questions and examples of 'good' application.  Task III: OPC summary and written input section 3.3 addressing questions on



<p>-Contribute to competitiveness and growth</p> <p><i>Objectives of the specific instruments</i></p> <p>-Achieve greater harmonisation in the admission conditions and procedures applied by Member States towards third-country nationals;</p> <p>-Address skills shortages in key sectors of the EU economy by attracting and retaining third-country nationals with the requisite skills;</p> <p>-Address labour market mismatches across the EU by strengthening intra-EU mobility rights of third-country</p>	<p>permit?</p> <p>To what extent has intra-EU mobility increased among third-country nationals included in the personal scope of the Directives?</p> <p>To what extent have the rights of third country nationals covered by the directives become more comparable to those of nationals (e.g. in terms of right to access labour market; etc.)</p>	<p>to the migrants as a destination, improve the efficiency of application and control procedures, ensure fair treatment of the third-country nationals, prevent their exploitation, facilitate their integration and raise the trust in appropriate and effective migration management amongst the different Member State authorities (as to facilitate the intra-EU migration of third country nationals).</p> <p><b>H-EQ5A_3: Re Objective Harmonisation as an overarching goal of the legal migration acquis</b></p> <p>Member States have largely transposed the Directives into their national legislation and thus, legal harmonisation has mostly been achieved. Legal transposition is overall not seen as problematic. However, some Directives give large margin for discretion (may clauses) and national immigration systems vary significantly, which impacts harmonisation. The legal baseline (what was in place before the adoption of the Directives) will also be considered under this question</p> <p><b>H-EQ5A_4: Re Objective Harmonisation as an overarching goal of the legal migration acquis</b></p> <p>Practical application differs significantly (e.g. in terms of processing times, fees, burdensome of documents, access to information, etc) and harmonisation across MS in that respect is still largely lacking.</p> <p><b>H-EQ5A_5:</b> TCN respondents to the OPC stated that they encountered problems when applying for a residence permit. The most common issue identified is the length</p>	<p>admission conditions/rights/intra-EU mobility/change of status/transfer of benefits of TCN(Q18; 41-75; 106)</p> <p>Task III synthesis, section 3.3 (Interviews with authorities for students on challenges affecting the admission, length of stay and mobility etc., Member States Hearing, EMF, EESC, advisory committee on free movement)</p>
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	<p>nationals.</p> <p>-Ensure greater comparability between the rights of third-country nationals and EU nationals.</p>		<p>of the procedure (83%), followed by the high costs of permit and the documents required (57%).</p> <p><b>H-EQ5A_6: Re Objective Attracting and retaining TCNs</b> The migration from third countries is important in the context of labour shortages and gaps that some MS experience; Such shortages negatively affect the stock of EU's human capital and thus undermine the EU's competitiveness and the strategic ambition of the Europe 2020 strategy to deliver smart, sustainable and inclusive growth. Legal migration is only one factor that contributes to competitiveness and growth in the EU. Lack of data prevents us from making a general conclusion about the EU as a whole. Academic studies in some Member States show that labour migration has positive impact on the economy and competitiveness.</p> <p><b>H-EQ5A_7: Re Objective Fair treatment of third-country nationals, also contributing the integration</b></p> <p>The majority of Directives include provision of equal treatment. However, many 'may clauses' and practical application research shows that there are various issues.</p> <p><b>H-EQ5A_8:</b> Other Directive-specific objectives will be assessed.</p>	
<p><b>EQ 6: What have been</b></p>	<p>EQ 6A: Were there any</p>	<p>To what extent was the adoption of the Directives</p>	<p><b>H-EQ6A_1:</b> Overview of migration flows using statistics (flow and stock)</p>	<p>Task I:</p>

<p><b><i>the effects of the legal migration Directives, and to what extent can such effects be attributed to the EU intervention?</i></b></p>	<p>quantitative or qualitative effects on migration flows (at least volumes, categories of migrants) in the control period since the introduction of the EU legal migration directives?</p>	<p>associated with an increase in flows / volumes of the categories of TCN concerned:</p> <ul style="list-style-type: none"> <li>-Family members of TCN;</li> <li>-Long term residents holding EU LTR permits;</li> <li>-Single Permit holders;</li> <li>-EU Blue Card holders;</li> <li>-Students;</li> <li>-Researchers,</li> </ul> <p>To what extent was the adoption of the Directives associated with a strengthening of the rights enjoyed by TCN resident in EU Member States?</p>	<p>and quantitative analysis show that during the period observed there was significant dynamics of the migrant flows and issuance of first permits, in particular during the period of the 2008 economic crisis.</p> <p>Qualitative changes in the categories of migrants attracted into the EU following the introduction of various legal migration directives is possible only in certain Member States, where relevant statistical data is available. In majority of MS the data does not allow to provide sufficient detail to draw definite conclusions about qualitative changes.</p> <p><b>H-EQ6A_2:</b> EU legal migration framework has had a relatively positive impact on the legislation and practices of EU Member States for some categories of TCNs. For example, civil society organisations in a selected number of EU Member States have found that the FRD and the LTR Directive have positively contributed to the support for legal migration and equal treatment, and that the SPD has helped simplify procedures.</p> <p><b>H-EQ6A_3:</b> At EU level, the coexistence of specific schemes for each group of economic migrant has resulted in a very complex and fragmented system that does not facilitate a uniform implementation</p>	<p>Statistical analysis: trend analysis: i.e. analysis of total flows of each TCN category (and effects) over time and analysis of flows linked to the Directives.</p> <p>Task III:</p> <p>OPC summary and written input section 3.3 addressing questions on /rights/intra-EU mobility/change of status/transfer of benefits of TCN(Q18; 53-75; 106)</p> <p>Task III synthesis, section 3.3 (Interviews with authorities for students on challenges affecting the admission, length of stay and mobility etc</p>
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across Member States and which has the potential to curtail some of the objectives for which it was conceived (e.g. equal treatment). For example, numerous stakeholders have complained about the higher level of protection that is provided for high-skilled migrants as compared to low and medium-skilled TCNs.

**H-EQ6A\_4:** From the OPC: The majority of non-EU citizens looking to migrate to the EU (i.e. 11 out of 14 respondents) believe that the current conditions for entry/residence/work constitute a disincentive to migrate. The main obstacles identified concern the visa requirements, finding an employment from outside the EU, the recognition of qualifications and the complexity and length of the procedure.

**H-EQ6A\_5:** Business and economic factors very important for attractiveness.

**H-EQ6A 6:** EU permanent and long-term residency is important for integration and retaining of talent (e.g. for a period of initially five years). Transition from highly-skilled to granting access to long-term residency (e.g. for students/researchers)

EQ6B: To what extent can such effects be attributed to EU

How does the volume of EU residence permits issued to the relevant TCN categories compare to the volume of

**H-EQ6B\_1:**

In terms of *quantitative* changes in migration flows: these are largely influenced by a range push and pull

Task I:

Drivers of Migration

Statistical analysis:

<p>legal migration directives?</p>	<p>national permits in countries where parallel schemes exist (e.g. Blue Card holders, LTRs) during the reference period?;</p> <p>To what extent do the categories of TCN covered by the Directives (who entered the EU during the reference period) consider that the existence of the legal migration Directives has:</p> <ul style="list-style-type: none"> <li>-made it easier for them to enter and stay in an EU Member States (and reasons why);</li> <li>-strengthened the rights that they enjoy as residents of one of the EU Member States;</li> <li>-made the EU a more attractive destination compared to other potential OECD destinations (and reasons why).</li> </ul> <p>To what extent do national authorities consider that the Directives led to the introduction or improvement of national parallel schemes?</p>	<p>factors (humanitarian or economic crises in third countries; labour market and economic situation in EU); Legal migration acquis may facilitate these flows, but it cannot serve in itself as a single 'driver' for migration; The EU labour acquis (SWD, BCD, or ICT, and to some extent S&amp;RD for researchers) <i>is demand driven</i> by EU employers' needs. The main driver for quantitative changes remain the EU labour market and economic needs;</p> <p>Parallel national schemes and 'flow' from such schemes to EU schemes also should be taken into account.</p> <p><b>H-EQ6B_2:</b> Comparison of permits issued on the basis of EU Directives to similar comparable permits based on national legislation</p> <p><b>H-EQ6B_3:</b> The attractiveness of the EU Member States differs depending on the category of third-country nationals coming to the EU, such as workers, students, or those coming in the case of family reunification. The attractiveness also differs based on the region third-country nationals are coming from and the historic ties to certain Member States. For example, non-European third-country nationals migrate to the United Kingdom, Spain or France.</p> <p><b>H-EQ6B_4:</b> The EU legal migration acquis responds to some of the pull</p>	<p>Trend analysis: i.e. analysis of total flows of each TCN category (and effects) over time and analysis of flows linked to the Directives.</p> <p>Task II:</p> <p>EU synthesis report: analysis of extent to which parallel schemes are more attractive to TCN.</p> <p>Task III:</p> <p>OPC summary and written input section 3.3 addressing questions on /rights/intra-EU mobility/change of status/transfer of benefits of TCN(Q18; 53-75; 106)</p> <p>Task III synthesis, section 3.3 (Interviews with authorities for students on challenges affecting the admission, length of stay and mobility etc</p>
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		<p>factors identified – notably on immigration system manifested in the admission conditions, procedures and rights as well as access to social security and healthcare. However, as seen with the EU Blue Card, some of the legal migration instruments have not been sufficiently attractive due to rigid admission conditions, too broad criteria, different implementation at national level.</p> <p><b>H-EQ6B_5:</b> Difficulties with regard to intra-EU mobility of migrants.</p> <p>It appears from the stakeholder consultation that third-country nationals who are seeking to move to a second country – especially those who wish to move permanently – face a number of challenges in doing so, ranging from the lack of information provided from official sources to the lack of transferability of their social security benefits. For instance, when it comes to students, the non-uniform regulation across the Member States results in different time thresholds as to how much time TCNs can spend abroad for exchange programmes.</p>	
<p>EQ6C: To what extent can such effects be attributed to other EU policies?</p>	<p>Did changes in the volume of residence permits issued by reason (e.g. Single Permits) take place following the adoption / entry into force of other EU policies?</p> <p>To what extent do national authorities / employers /</p>	<p><b>H-EQ6C_1:</b> Mapping of other EU policies and their attribution effect to legal migration flows. The main policies that may influence the flow of legal migrants may include economic and labour market policies stimulating the economy</p>	<p>Task I: Drivers of Migration Statistical analysis: Trend analysis: i.e. analysis of total flows of each TCN category (and effects) over time and analysis of flows</p>

		<p>migrant associations consider that:</p> <ul style="list-style-type: none"> <li>-the observed changes to migration flows were the result of other EU policies (and reasons why);</li> <li>-the observed improvements to the rights enjoyed by TCN were the result of other EU policies (and reasons why).</li> </ul>		<p>linked to the Directives.</p>
<p><b>EQ 7: To what extent do the observed effects of the implementation of the Directives correspond to their objectives?</b></p>	<p>EQ 7A. What effects did the implementation of the respective Directives have (including the effects of the way different Member States have applied the Directives)?</p> <p>Were the effects in line with the objectives of the Directives?</p> <p>- <i>Effects on stakeholders</i>, in particular the impacts on third-country</p>	<p>To what extent was the implementation of the Directives (including the different approaches to transposition of different MS) associated with:</p> <p><i>Admission conditions and procedures:</i></p> <ul style="list-style-type: none"> <li>-greater convergence in the admission conditions and procedures of MS;</li> <li>-simpler and swifter admission procedures of MS ;</li> <li>-more transparent admission conditions of MS ; etc.</li> </ul> <p><i>The rights of legally residing TCN:</i></p> <ul style="list-style-type: none"> <li>-greater clarity (legal</li> </ul>	<p><b>H-EQ7_1:</b> Examination of attribution effects and their correspondence to objectives (see H-EQ5A_1)</p> <p><b>H-EQ7_2:</b> Practical application differs significantly (e.g. in terms of processing times, fees, burdensome of documents, access to information, etc) and harmonisation across MS in that respect is still largely lacking.</p>	<p>Task I:</p> <p>Internal coherence assessment: analysis of convergence, increased clarity, legal certainty, etc. introduced by the EU Directives overall.</p> <p>Task II:</p> <p>EU synthesis report: all Phases, focussing on different transposition and application choices of MS, examples of 'good' application, etc.</p> <p>Task III:</p> <p>OPC summary and written input section</p>

<p>nationals, SMEs, employers, administrations, any other relevant stakeholders, (consider at least social, economic, (environmental), fundamental rights) as well as on a macro perspective.</p> <p>If no change was identified, why was this the case?</p>	<p>certainty) as regards the rights to equal treatment, to access the labour market, to employment, to entry and residence in the country;</p> <p>-rights for TCNs that are more comparable with those of EU nationals.</p> <p><i>Intra-EU mobility</i></p> <p>-a strengthening in law of the rights of TCN legally resident in one MS to enter and stay in another MS;</p> <p>-an upward trend in intra-EU mobility of legally resident TCNs.</p> <p><i>Other stakeholders</i></p> <p>-Domestic workforce (lower-skilled): a rise in job displacement for the domestic workforce and/or</p> <p>-Domestic workforce (higher skilled): an increase in job creation. -Etc.</p> <p><i>Macro effects</i></p> <p>-An increase in job creation / innovation / economic competitiveness in the EU:</p> <p>-An increased risk of brain drain in certain sectors of the economies of third countries,</p>	<p>3.3 addressing questions on admission conditions/rights/intra-EU mobility/change of status/transfer of benefits of TCN(Q18; 41-75; 106)</p> <p>Task III synthesis, section 3.3 (Interviews with authorities for students on challenges affecting the admission, length of stay and mobility etc; social partners focus groups, EMF, EESC)</p>
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		<p>along with heightened sensitivity to this problem and adoption of legal provisions to address it.</p> <p>To what extent are the observed effects in the above-listed areas consistent with the objectives of the Directives?</p>		
<p><b>EQ 8: To what extent did different external factors influence the achievement of the objectives?</b></p>	<p>EQ 8A: Identify which, if any, external factors may have influenced the changes.</p> <p>Identify which, if any, MS specific factors influenced the changes.</p> <p>If there were no changes identified, explain why.</p>	<p>Did the changes identified in EQ 7A take place following:- The adoption of other EU policies (e.g. on combatting undeclared work) – see also answers to EQ6C;</p> <p>-European and / or global economic developments (e.g. 2008 financial crisis);</p> <p>-Sudden increases in asylum flows related to environmental crises or conflicts; etc.</p> <p>Did the changes identified in EQ7A take place following the onset of MS specific factors, including:</p> <p>-Policy developments (e.g. new education policies which invest in vocational training, new labour market policies introducing greater flexibility, new systems to determine labour market needs).</p>	<p><b>H-EQ8_1:</b> External factors to be considered, <i>inter alia</i>: aging population, technological change, business context, economic situation, etc.</p> <p>External factors have different impacts on different MS.</p> <p><b>H-EQ8_2:</b> From an <b>internal perspective</b>, along with the fragmented nature of the legislation, the fact that migration policies remain a domestic affair was raised as a factor preventing the EU rules from deploying its full potential</p>	<p>Task I: Drivers of Migration Statistical analysis: Trend analysis: i.e. analysis of total flows of each TCN category (and effects) over time and analysis of flows linked to the Directives.</p> <p>Task II Interviews with migrant agencies</p> <p>Task III This is also addressed in relevance / similar Task III synthesis, section 3.3 (Interviews with authorities for</p>

-Political developments (e.g. elections, new governments);

-Lobbying by NGOs;

-Public opinion; etc.

To what extent do key stakeholders (national authorities, TCNs, employers, recruitment agencies) consider that these EU, international and MS-specific factors influenced the changes?

students on challenges affecting the admission, length of stay and mobility etc; civil society hearing on issues with sectorial approach; Member States hearing, EESC, SLIC)

### **1.1.1.3 Efficiency**

Efficiency refers to the extent to which the desired effects of an intervention are achieved at a reasonable cost. In the framework of legal migration policy and the 'fitness' of EU legislation, efficiency is about whether the EU legislation leads to lower 'friction' or transition costs. All legal migration incurs such costs: migrants have to apply, employers may have to invite/apply, migrants have to register etc. Consequently, the main efficiency consideration is whether EU legislation has added to / reduced costs (e.g. costs associations with application fees, administrative burden, delays, uncertainty). Agents working for migrants or employers are very well placed to help determine this.

As noted in the study specifications, a full cost-benefit analysis of regulatory costs or administrative burden associated with the implementation of the Directives would be difficult to implement because the costs and benefits depend on too many variables outside of the control of the Directives – from the total number of migrants arriving in a country (most of whom are not covered by the Directives), to the economic situation in each Member State to external 'shocks' such as conflicts which result in large inflows of asylum applicants, etc.

Rather than conduct a full cost-benefit analysis of the regulatory costs of implementing the Directives, the efficiency part of the evaluation will focus on the following questions:

- What are the main costs and benefits associated with the implementation of the legal migration directives for different stakeholders?
- Do the costs and benefits (and their distribution across stakeholders) differ significantly across Member States?
- If so, what accounts for these differences? This question will be addressed by examining factors related to a) the provisions of the Directives themselves (in particular the 'may clauses'); b) the way the Directives have been implemented in different Member States; and c) other factors (e.g. other national policies and circumstances, and other EU and international factors which may impact on Member States in different ways).

The study specifications indicate that the efficiency questions of the fitness check should only address those legal migration Directives that have been implemented for at least 3 years at the start of the study. This concerns three Directives: the LTR Directive, the Directive on Family Reunification and the Single Permit Directive. The EU Blue Card Directive will only be addressed partially in this section by drawing on the results of the recent evaluation and impact assessment. The Directives on Students and on Researchers (prior to their recast) will also be partially addressed, drawing on earlier implementation reports and the IA on the recast Student and Researchers Directive.

The judgment criteria and methodology proposed to answer the efficiency questions are presented in Table 4 below.

Table 4. Evaluation Framework for evaluating the efficiency of the EU's legal migration acquis in Task IV

<b>EFFICIENCY</b> <b>EQ 9: Which type of costs and benefits are involved in the implementation of the Legal migration Directives?</b> <b>EQ 10: To what extent did the implementation of the Directives led to differences in costs and benefits between Member States? What were the most efficient practices?</b>				
<b>Evaluation question</b>	<b>Sub-question / research question</b>	<b>Judgment criteria</b>	<b>Preliminary considerations / hypotheses</b>	<b>Key sources / evidence basis</b>
<b>EQ 9: Which type of costs and benefits are involved in the implementation of the Legal migration Directives?</b>	EQ 9A: How are the main costs and benefits related to the implementation of the legal migration directives distributed among Stakeholders?  How is this distribution affected by the implementation choices made by Member States? <sup>1</sup>	What types of costs and benefits do different stakeholders derive from the legal migration Directives?  -Discouraging effects of restrictions and loss of talent/ labour to competitor destinations;  -Displacement of local labour supply;  -Leakage of resources;  Brain drain from third countries;  -Etc.  Examples of the types of benefits that will be included in the typology are:	<b>H-EQ9A_1:</b>  There are direct administrative costs linked to the implementation of the labour directives:  -Processing costs of <b>authorising body</b> ; -Costs associated with development and monitoring of legislation (EU and national levels); Cost of adapting IT systems; Benefits include visa fees;  <b>-Employers'</b> cost of familiarisation with new rules; cost of immigration advisers / services; Lost output due to unfilled vacancies; There are many 'hidden' costs related to HR system; recruitment and legal fees; there may be costs for 'qualifying' to recruit migrants	Task III:  OPC summary and written input section 3.4 addressing questions costs and benefits for TCN (Q19-22; 28-34; 47-48;) employers (Q79-81; 86-90) authorities in MS (Q96), other (Q105)  Task III synthesis, section 3.4 (Civil Society Hearing; expert workshop, social partners focus groups)  Task IV Economics Paper Analysis

<sup>1</sup> The overall cost and benefits of migration in a macro-economic perspective fall outside of the scope of this Fitness Check.

<p>-Vacancies filled by third-country nationals and skill shortages met;</p> <p>-Multiplier effects through enlarged talent pool;</p> <p>-Reduced opportunities for labour exploitation through increased protection of labour market rights of TCN workers;</p> <p>-Etc.</p> <p>How does the distribution of costs and benefits (by stakeholder type - TCNs, employers, SMEs, administrations, etc) differ across Member States?</p> <p>-Quantification where possible of costs per Member State, including through the use of proxies (e.g. time costs and fees for residence permit applications in different MS, expressed as Standard Cost Model).</p> <p>-Qualitative assessment of the significance of other costs and benefits across Member States where quantification is not possible.</p>	<p>(e.g. recognised sponsorship scheme in NL).</p> <p><b>Third country migrants'</b> costs include: Visa application fees; Cost of application e.g. immigration advisers/ legal fees etc; Benefits include increased incomes;</p> <p>Beyond direct implementation costs, there are wider social and economic / fiscal costs. Evidence from studies in Member States shows that there is small impact of migration on wages and employment / unemployment rate, and differences amongst Member State depend on local economic realities</p> <p>Evidence shows that the <i>net fiscal contribution</i> impact of migrants (i.e. their tax contributions, net of any government expenses on , social security, health coverage, or welfare coverage) is positive in the majority of Member States.</p> <p>There are also cost saving that arise from the directives in terms of time saving resulting from the introduction of certain directives (e.g. the SPD, ICT).</p> <p><b>Economic impact</b> on GDP; GDP</p>
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	<p>In which countries are the costs related to the implementation of the legal migration Directives highest / lowest compared to benefits for each stakeholder type (TCNs, EU workers, employers, SMEs, administrations, etc)?</p> <p>Is there any correspondence between the countries with the highest costs and certain implementation choices?</p>	<p>per person indicators, on productivity, as well as on research and innovation</p> <p><b>Social impact:</b> challenges to integration in EU societies; impact on social cohesion and families in regions with high-rates of emigration; impact on diversity</p>	
<p>EQ 9B: What factors drive the costs and benefits and how are the factors related to the EU intervention?</p>	<p>Are any factors linked to provisions of the legal migration directives driving the costs and benefits related to implementation?</p> <p>What other factors may be driving the costs / benefits related to the implementation of the EU legal migration directives?</p>	<p><b>H-EQ9B_1:</b></p> <p>- '<b>Clauses</b>' which permit MS to adopt restrictive approaches to implementation, adopting optional <b>admission conditions</b> established by the directives for particular categories of TCNs, e.g. existence of a contract, salary thresholds, etc.</p> <p>- Insufficient provision of information by national authorities to affected stakeholders (employers, recruitment agencies);</p> <p>- Weak administrative capacity at national / regional / local government level to administer</p>	<p>Task I:</p> <p>Drivers of Migration</p> <p>Statistical analysis: Trend analysis: i.e. analysis of total flows of each TCN category (and effects) over time and analysis of flows linked to the Directives.</p> <p>Task II:</p> <p>EU synthesis report: all Phases, focussing on overall 'inefficiencies' associated with the different procedures put in place and capacity issues identified in</p>

			<p>applications;</p> <p>- Weak or absent coordination mechanisms between Member States, making it difficult to share information;</p>	<p>authorities, etc.</p> <p>Structured legal analysis: extent to which MS have transposed more restrictive 'may' clauses.</p> <p>Task III:</p> <p>OPC summary and written input section 3.4 addressing questions costs and benefits for TCN (Q19-22; 28-34; 47-48;) employers (Q79-81; 86-90) authorities in MS (Q96), other (Q105)</p>
<p><b>EQ 10: To what extent did the implementation of the Directives lead to differences in costs and benefits between Member States? What were the most efficient practices?</b></p>	<p>EQ 10A: For each step of the migration chain, are there elements where there is scope for more efficient implementation?</p> <p>To what extent have the implementation options provided by the Directives and as chosen by MS influenced the efficiency of their implementation?</p>	<p>What efficiency issues exist at each step of the migration chain?</p> <p><i>-Pre-application phase:</i> e.g. fragmented approach to provision of information on legal migration possibilities.</p> <p><i>-Application phase:</i> e.g. absence of standardised application forms; multi-step vs. single-step application procedures; lengthy procedures for legal remedies.</p>	<p><b>H-EQ10A_1:</b></p> <p><i>-Pre-application phase:</i></p> <p>Despite the different modalities Member States have put in place to provide tailored information upon request, this was nevertheless easily obtained in the majority of Member States and provided in a format with a relative degree of comprehensiveness and user-friendliness. However, several significant delays occurred before a response was received and</p>	<p>Task II:</p> <p>EU synthesis report: all Phases, focussing on extent to which MS have introduced 'inefficient' administrative requirements and procedures (e.g. in terms of documentation required, steps to be followed, waiting times, fees charged, etc.)</p> <p>EU synthesis report:</p>

	<p><i>-Entry and travel phase:</i> e.g. administrative requirements for TCNs to travel even in the event of holding valid permit.</p> <p><i>-Post application phase:</i> e.g. lengthy waiting periods to receive permits, inefficient division of competences at MS level for submitting/delivering/renewing permits.</p> <p><i>-Residency phase:</i> e.g. costs of permits (sticker vs stand-alone document), short duration of permits, complexity of renewal procedures (type of evidence needed, etc.), restrictions on right to access labour market, obstacles to status change.</p> <p><i>-Intra-EU mobility phase</i> e.g. legal and practical obstacles to intra-EU mobility create missed opportunities for legal migrants to addresses</p>	<p>some Member State authorities only provide very generic information. There is scope for streamlining the information on EU directives.</p> <p><i>-Application phase:</i> Application forms are available on paper, as well as in digital format, but a full online application can only be made in small number of Member States. Application fees charged vary greatly between the Member States, also proportionally, when considering the fees as a share of the mean monthly gross earnings each Member State. In some Member States, the excessive fees could constitute a barrier for some migrants or significant cost to employers – small business for instance may not take advantage of the directives. Around one fifth of the Member States charge other obligatory fees, but these are overall minor. Also,</p> <p><i>-Entry and travel phase:</i> Eight Member States<sup>2</sup> do not foresee any particular timeframe for the granting of an entry visa</p>	<p>analysis of practical application problems and extent to which these are caused / contribute to inefficiencies.</p> <p>Task III: OPC summary and written input section 3.4 addressing questions costs and benefits for TCN (Q19-22; 28-34; 47-48;) employers (Q79-81; 86-90) authorities in MS (Q96), other (Q105)</p>
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<sup>2</sup> BE, CY, CZ, DE, EE, LT, MT, SK



mismatches in EU labour market.

Are the MS with the most efficiency issues associated with certain implementation choices?

if the applicant does not yet hold a valid permit before entering the Member State. For Eleven Member States<sup>3</sup> timeframe ranges from 15 days in BG and LV to 90 days in LU. Upon arrival, TCNs need to register often with multiple institutions: AT, EL, ES, IT, LV, and NL, for instance may ask for registration with three institutions: migration / labour authorities, police, and health authorities.

*-Post application phase:*

Additional fees and multiple authorities involved in issues residence and work permits are common across the EU. Serious application issues have been identified as a result of the non- or partial transposition of the Single Permit Directive, requiring those falling under the Directive to introduce different requests and/or follow multiple steps

*-Residency phase:*

Integration requirements and measures differ significantly across Member States. In 12 Member States<sup>4</sup>, there are

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<sup>3</sup> AT, BG, ES, HU, IT, LU, LV, NL, PL, PT, RO

<sup>4</sup> AT, BE, BG, CY, DE, EL, FI, HR, IT, LU, MT, NL

mandatory integration requirements, while in the remaining Member States, integration measures (such as language and integration courses) are voluntary.

With regard to equal treatment, **no or incomplete transposition** of some legal provisions of the respective Directives, as found in 14 Member States<sup>5</sup>. This is most often the case with regard to social security benefits and access to public goods and services.

*-Intra-EU mobility phase*

Few Member States have provided for additional facilitations to the procedures and documentation requirements for mobile third country nationals in comparison to first time applicants. Short-term mobility, as far as regulated by the current directives is facilitated by the fact only five member states apply any regime for notification and only two for authorisation;

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<sup>5</sup> BE, DE, CY, EL, ES, FI, HU, IT, LV, LU, NL, PL, RO, SI.

<p>EQ 10B: Based on the legal migration acquis as implemented in the MS (for the three main Directives):</p> <ul style="list-style-type: none"> <li>- What factors influenced the efficiency with which the way legal migration is managed by the Member State?</li> <li>- If there are significant differences in costs (or benefits) between Member States, what is causing them?</li> </ul> <p>The analysis <b>shall focus on the admission procedure and intra-EU mobility.</b></p>	<p>To what extent are the costs and benefits of implementing the legal migration acquis by MS influenced by:</p> <ul style="list-style-type: none"> <li>-Internal organisational factors (division of competences within MS; number and type of institutions involved; transparency of procedures);</li> <li>-Intra-EU factors (extent to which MS have opportunities to coordinate their rules and procedures);</li> <li>-Third country coordination factors (extent to which MS have opportunities to coordinate with third countries in the management of legal migration).</li> <li>-Legal factors (role of courts, requirements stemming from other EU / national legislation);</li> <li>-Budget constraints (costs involved in setting up coordination platforms, costs involved in (re)training officials, costs involved in enhancing</li> </ul>	<p><b>H-EQ10B_1:</b></p> <p>Member States make different policy choices about implementing the EU labour directives and about national schemes they may maintain or develop. Member States may maintain national schemes more advantageous than EU directives in order to get strategic advantage and make their national labour market more attractive to TCNs.</p> <p><b>H-EQ10B_2:</b></p> <p>Specific institutional setup may imply more complex application procedure and conditions or arrival registration procedures imposed by the multiple institutions involved in the process;</p> <p><b>H-EQ10B_2:</b></p> <p>Budget constrains is another factor that may lead to poor or no training of officials; lack of electronic application services;</p> <p><b>H-EQ10B_3:</b></p> <p>Intra-EU mobility</p> <p>There is significant scope to increase efficiency in the application of intra-EU mobility</p>	<p>Task II:</p> <p>EU synthesis report: all Phases, focussing on internal organisation of the migration process.</p> <p>EU synthesis report: all Phases, analysing whether MS have adopted a fragmented approach to different categories of TCN (e.g. many different procedures and requirements) or a more 'streamlined' procedure covering multiple statuses.</p>
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	<p>mechanisms for linking migrant needs to skills shortages);</p> <p>-Etc.</p> <p>Are the differences in costs (or benefits) between Member States significant? (i.e. controlling for number of TCN applications received)</p>	<p>provisions of the directives. A great number of MS continue to apply a conservative approach, requiring the same procedures, conditions (including market tests) or proof of residence as first time applicants. Differences in adoption of equal treatment provision amongst MS, and failure to transpose equality provisions means that TCNs face different market conditions when moving between Member States.</p>	
<p>EQ 10C: Is there potential for further streamlining of the current EU legal framework taking into account administrative burden?</p>	<p>In what areas is there scope for more efficient implementation of the legal migration Directives (see responses to EQ 10a).</p> <p>What options for further streamlining are there?</p> <p>What are the obstacles to adopting such streamlining?</p> <p>-Legal obstacles;</p> <p>-Political feasibility;</p> <p>-Financial costs for EU/MS associated with any reforms;</p> <p>-Operational issues.</p>	<p><b>H-EQ10C_1:</b></p> <p>Streamlining of the current EU legal framework is a matter of reaching an agreement of many different stakeholders (employers, trade unions, rights activists and groups representing interests of migrants) as well as political consensus amongst Member States or within the European Parliament.</p> <p><b>H-EQ10C_2:</b></p> <p>A number of MS have adopted an approach that makes them more attractive to migrants: from user-friendly information in multiple languages and online applications; to reduced number of conditions; to possibility to obtain permits in third country without a need to apply for a visa</p>	<p>Task II:</p> <p>EU synthesis report: examples of 'efficient' application of the EU Directives.</p>

		<p>or spend additional time applying for permits upon arrival, to ensuring a wide range of equal treatment rights or integration provisions; to measures facilitating intra-EU mobility by reducing conditions or procedures. Streamlining provisions, which are not politically sensitive, to most efficient standards in the EU is possible: streamlining admission criteria and documentation, or standards for information availability, or availability of online applications, or time for processing permits and visas, or even the price of permits could make EU more attractive.</p> <p>While some of these will reduce costs for Member States (such as time spent on application processing), others may increase their costs (such as access to certain social benefits), but also benefits (make their labour market more attractive).</p>
<p>EQ 10D: Compare the costs and benefits between Member States for implementing legal migration Directives, including administrative costs, taking into account the implementation choices made (including cases of gold plating) and compare, if relevant, costs and benefits with other countries not</p>	<p>Which MS implementing the legal migration Directives have the highest / lowest costs (for different stakeholders)</p> <p>To what extent are the costs for different</p>	<p><b>H-EQ10D_1:</b></p> <p>There are a multitude of factors and variable that may influence total cost and benefits for one Member State of each directive. The value and magnitude of direct implementation costs, the</p>

implementing the Directives.

stakeholders (including administrative costs) higher in countries that have not implemented the Directives?

fiscal costs, or the wide social and economic costs for each directive and each MS are not available, and may only be presented in relative terms – Member States that have higher or lower costs.

**H-EQ10D\_2:**

The implementation choices of Member States are not based on a strict cost-benefit analysis but rather on political or policy choices. Higher costs, linked to more complex admission procedures and conditions, may correspond with less benefits for the domestic economy, job market, employers or migrants: a lose-lose situation’.

#### **1.1.1.4 EU Added Value**

Assessing the EU-added value requires that changes can be identified in a way that can reasonably be attributed to EU intervention, rather than any other factors. Attention will be given to the value resulting from the EU legislation that is additional to the value that would have resulted from interventions initiated at national or institutional level

This section tackles two evaluation questions:

***EQ 11: What have been the positive effects and results brought in by the EU legislation compared to what could have been achieved at Member State or international level?***

***EQ 12: To what extent do the issues addressed by the legal migration Directives continue to require action at the EU level?***

In order to answer the first of these evaluation questions, the study team will use the findings from the analysis of effectiveness, presenting arguments on causality / contribution. The study team will also offer a counter-factual analysis in order to assess the extent to which the positive achievements associated with the adoption of the legal migration Directives would have taken place (anyway) were the Directives not to exist. For the counter-factual analysis, the study team will compare the evolution of policy in countries that adopted the legal migration Directives with the evolution of policy in comparable countries that did not. This will be further explored through interviews with key stakeholders.

The second evaluation question requires analysis of current and future trends, what they (will) imply in terms of the main issues which (will) confront the Member States in the area of legal migration and to what extent Member States are / will be able to address them without EU level actions. Particular attention will be given to issues not currently covered by the EU legal migration acquis and whether they are likely to become more prominent. The study team will rely on foresight studies already published by reputable organisations (OECD, etc.) in order to build these scenarios. The scenarios will then be used to consider whether (and what kind of) action at EU level is and will be needed to address the issues.

The judgment criteria and methodology proposed to answer the EU Added Value questions are presented in the table below

Table 5. Evaluation Framework for evaluating the EU Added Value of the EU's legal migration acquis in Task IV

<b>EU ADDED VALUE</b> <b>EQ 11: What have been the positive effects and results brought in by the EU legislation compared to what could have been achieved at Member State or international level?</b> <b>EQ 12: To what extent do the issues addressed by the legal migration Directives continue to require action at the EU level?</b>				
Evaluation question	Sub-question / research question	Judgment criteria	Key sources / evidence basis	
<p><i>EQ 11: What have been the positive effects and results brought in by the EU legislation compared to what could have been achieved at Member State or international level?</i></p>	<p>EQ 11A: What would the situation have been today without the EU intervention, compared to interventions only at national level?</p>	<p>Have the EU legal migration Directives helped to</p> <ul style="list-style-type: none"> <li>make the labour migration policies of MS less fragmented / more consistent?</li> <li>-make it easier for prospective TCN applicants to obtain information about legal avenues to enter and stay in the EU?</li> <li>-open up additional avenues for legal migration;</li> <li>-increase total legal migration flows into EU Member States (relative to other OECD destinations);</li> </ul>	<p><b>H-EQ11A_1:</b> The legal migration Directives had a number of <b>added value</b> that would not have been realised without them such as:</p> <ul style="list-style-type: none"> <li>the recognition of the rights of third-country nationals across all Member States (equal treatment), as well as the possibility to pursue cases through ECJ (for TCN, but also for the European Commission), and better rights for family members under the FRD, as well as better conditions for long term residence under the LTR</li> <li>- greater legal certainty and predictability for businesses (making it easier to comply, legislation is more consistent), but also encouragement of employers to view the EU as a 'single market', and</li> <li>- simplified administrative procedures for national authorities, as well as transferring successful practices from one MS to another.</li> <li>- Introduction of permits that did not</li> </ul>	<p>Task I:</p> <p>Internal coherence assessment: analysis of convergence, increased clarity, legal certainty, etc. introduced by the EU Directives overall.</p> <p>Task II:</p> <p>EU synthesis report: all Phases, focussing on key benefits brought in practice by the EU Directives in terms over convergence in terms of access to information, access to LTR status, enjoyment of equal treatment, increased legal certainty, opportunities for intra-EU mobility, etc.</p> <p>Task III:</p> <p>OPC summary and written</p>



<ul style="list-style-type: none"> <li>-make it easier for employers to recruit highly qualified TCN workers.</li> <li>-reduce skills shortages and skills mismatches in the EU;</li> <li>-distribute pressure more evenly across diplomatic missions in third countries by making the migration laws of EU Member States more consistent.</li> <li>-strengthen the prospects for TCN legal migrants to access permanent residence;</li> <li>-strengthen the prospects for TCN legal migrants to enjoy equal treatment relative to EU citizens;</li> <li>-increase legal certainty for TCN applicants during and after the process of applying for residence permits;</li> <li>-increase opportunities</li> </ul>	<p>exist previously in some MS (e.g. ICT or highly skilled scheme)</p> <p>- As well as procedural safeguards</p> <p><b>H-EQ11A_2:</b> Several admission conditions were harmonised due to the implementation of the Directives, including: proof of sufficient resources, sickness insurance, adequate accommodation and proof of address, proof of a valid travel document as well as conditions related to public policy, public security and public health and ensuring that there is no risk of overstaying and the costs of return are covered (although some coherence issues were identified, see coherence section).</p> <p><b>H-EQ11A_3:</b> The Directives are not the drivers of migration, but rather facilitate migration – other factors, mainly socio-economic are the drivers (see also hypotheses under relevance).</p>	<p>input section 3.5 EU added value of the legal migration Directives and their opinion on whether the issues addressed by the legal migration Directives continue to require action at the EU level (Q10;12;13;93)</p> <p>Task III synthesis, section 3.5 (interviews with national authorities for students, Civil Society and MS Hearing; expert workshop, EESC)</p>
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	for TCN migrants to move from one MS to another. Etc.		
EQ 11B: What have been the qualitative and quantitative positive effected results brought in by EU legislation? If an expected effect has not materialised, why was this the case?	<p><i>What evidence is there to suggest that the EU legal migration directives contributed to the qualitative and quantitative changes identified in EQ6A, EQ6B and EQ7A? For example, is any of the following evidence available?</i></p> <ul style="list-style-type: none"> <li>-Evidence of convergence in admission conditions and procedures across MS that have transposed the Directives.</li> <li>-Stakeholder views as regards the reasons for this convergence.</li> <li>-Evidence of simplification of procedures for issuing residence and work permits to TCN migrants, and reasons for this.</li> <li>-Stakeholder views as</li> </ul>	<p><b>H-EQ11B_1:</b> Stakeholders mainly agreed that there have been positive effects brought in by the EU legislation:</p> <p><b>Intra-EU mobility</b>, despite some concerns about its effectiveness, was identified as one of the main added value of EU legislation.</p> <p>Another positive effect of EU legislation is that the directives have established a common, <b>harmonised legal framework</b> in certain areas.</p> <p>Simplified administrative procedures (see also <b>H-EQ11A_2</b>)</p> <p><b>H-EQ11B_2:</b> Member States representatives note that national permits are in several cases preferred and provide a broader spectrum of rights for third country national and are better targeted to meet their needs than the Directives on EU level. For example, a number of national BCD and LTR equivalent statuses seem to offer more favourable conditions and thus wider access to potential applicants.</p> <p><b>H-EQ11B_3:</b> There is substantial variation in the rules concerning admission procedures across the</p>	<p>Task II: EU synthesis report: all Phases, focussing on key benefits brought in practice by the EU Directives in terms over convergence in admission conditions, simplification of procedures, strengthening of rights, increasing legal certainty, supporting intra-EU mobility, etc.</p> <p>Task III Task III synthesis, section 3.5 (interviews with national authorities for students, Civil Society and MS Hearing; expert workshop, EESC)</p>

regards the reasons for this convergence.

-Stakeholder views on solidarity between MS and how this has changed since the transposition of the Directives.

-Share of residence permits linked to EU Directives issued by MS, by reason, before and during the reference period, in particular following the implementation of the single permit.

-Employer views on whether recruitment of TCN highly qualified workers would be more difficult without the EU Blue Card directive.

-NGO/migrant associations views on the effects of the legal migration directives on strengthening equality and fundamental rights for TCNs.

Directives, with regard to access to information, submission of application, timeframe to process the application etc.

**H-EQ11B\_4:** Several inconsistencies with regard to **equal treatment** have been identified. The inclusion of specific equal treatment provisions in each Directive, as well as specific restrictions, has introduced a degree of discrimination between the different categories of third-country nationals which cannot be easily justified and rather seem to have been the results of negotiations with Member States in view of the specificities of their national systems and a general concern that migrants may not contribute sufficiently to the national economy but opt for claiming benefits instead.

**H-EQ11B\_5:** Some inconsistencies with access to **employment and self-employment** have been identified. All nine Directives include provisions on access to employment subject to restrictions. The restrictions are category-specific and thus, vary depending on the category. The nine months for job searching as provided for in the S&RD could also be included in the Blue Card, i.e. after the employment contract has ended.

<p><b>EQ 12: To what extent do the issues addressed by the legal migration Directives continue to require action at the EU level?</b></p>	<p>EQ 12A: Based notably on the statements on subsidiarity in the initial proposals for the Directives, which issues still require interventions at the EU level?</p>	<p>Have Member States developed policies / tools / remedies to unilaterally or bi-laterally address the current and future issues identified under EQ1 i.e. without EU level interventions?</p>	<p><b>H-EQ12A_1:</b> Several issues that require action at EU level have been identified by stakeholders, including:</p> <ul style="list-style-type: none"> <li>better management of intra-EU mobility,</li> <li>more cooperation between Member States' authorities</li> <li>recognition of rights of TCN</li> <li>better matching of skills and jobs across the EU</li> <li>transferability of social security rights</li> <li>change of status from one permit to another (see section 7.1.2. in Task II synthesis).</li> <li>Equal treatment in, <i>inter alia</i>, working conditions, freedom of association, social security benefits, education, recognition of academic and professional qualifications, tax benefits, access to goods and services and advice services.</li> <li>Integration requirements that differ between Member States</li> </ul>	<p>Task II:</p> <p>EU synthesis report: all Phases, focussing on arrangements for TCN in areas not covered by the current EU Directives / those where MS can still apply national procedures.</p> <p>Task III:</p> <p>OPC summary and written input section 3.5 EU added value of the legal migration Directives and their opinion on whether the issues addressed by the legal migration Directives continue to require action at the EU level (Q10;12;13;93)</p> <p>Task III synthesis, section 3.5 (interviews with national authorities for students, Civil Society and MS Hearing; expert workshop, EMF, EESC)</p>
	<p>EQ 12B: What would be the consequences of withdrawing the existing EU intervention?</p>	<p>What would be the consequences of withdrawing the EU legal migration Directives on:</p>	<p><b>H-EQ12B_1:</b> Stakeholders agree that migration issues should be addressed at EU level to ensure a coherent approach.</p> <p><b>H-EQ12B_2:</b> The EU will become</p>	<p>Task I:</p> <p>Drivers of Migration</p> <p>Statistical analysis: Trend analysis: i.e. analysis of total flows of each TCN</p>

	<p>Consider at least issues such as legal certainty, competitiveness, solidarity, coordination, job shortages and any other relevant factors.</p>	<p>-the administration of legal migration policy (increased administrative burden, coordination difficulties)?</p> <p>-TCNs (reduced legal certainty, reduced rights, greater costs, reduced avenues for entering and staying, etc.)?</p> <p>-political relations between Member States(reduced solidarity)?</p> <p>-the EU economy (reduced EU competitiveness compared to other OECD regions),</p> <p>-Etc.</p>	<p>increasingly reliant on migrants to satisfy its labour demand. In view of the increased old-age dependency ratios also in other regions of the world, the EU is also likely to have to compete with these other regions in order to recruit young workers. If Member States were to compete amongst each other and with other regions, this would decrease the competitiveness of the EU.</p> <p><b>H-EQ12B_3:</b> Member States will return to national schemes.</p> <p><b>H-EQ12B_4:</b> Intra-EU mobility will be reduced. Mobility systems wouldn't be in place and you would create legal uncertainty for those who were admitted on the basis of Directives.</p>	<p>category (and effects) over time and analysis of flows linked to the Directives.</p> <p>Task III: OPC summary and written input section 3.5 EU added value of the legal migration Directives and their opinion on whether the issues addressed by the legal migration Directives continue to require action at the EU level (Q10;12;13;93)</p>
	<p>EQ 12C: Are there issues currently not covered at EU level which would require EU action?</p>	<p>What are the categories of TCN not currently covered by the EU legal migrations?</p> <p>What implications does their exclusion from EU level interventions have?</p> <p>What other issues</p>	<p><b>H-EQ12C_1:</b> There is a general agreement among stakeholders that that there should be an EU-level action to <b>facilitate the assessment and recognition of foreign academic qualifications.</b> Recognition of diplomas is a widely posed requirement, especially for work-related permits, but its existence and the related guidance are relatively difficult to find. This,</p>	<p>Task I Internal coherence assessment: gaps in personal and material scope of the Directives.</p> <p>Task II EU synthesis report: all Phases, focussing on arrangements for TCN in</p>

<p>would require (additional) EU action in each step of the migration chain?</p>	<p>together with the complex process of recognition itself and the multitude of requirements especially concerning regulated professions make recognition one of the more burdensome requirements for foreigners.</p> <p><b>H-EQ12C_2:</b> Member State representatives differ in their views on considering new EU legislation in this area. While some MS emphasise that there should not be new legislation before more experience and insight into the functioning of the current acquis has been gathered, others note that revisions should be possible.</p> <p><b>H-EQ12C_3:</b> For the issues with the scope of the Directives see relevance and coherence hypotheses (including additional categories, scope for family reunification).</p> <p>For gaps in personal scope of the Directives see, <b>H-EQ2A_2</b></p> <p><i>Note: there was a discussion on introducing a mechanism that would simplify the process of making amendments without having to opt for a recast in future.</i></p>	<p>areas not covered by the current EU Directives / those where MS can still apply national procedures.</p> <p>Task III</p> <p>Task III synthesis, section 3.5 (interviews with national authorities for students, MS and Civil Society Hearing; expert workshop, EMF, EESC)</p>
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