

## Terms of reference for

# A Study in support of a Fitness Check and compliance assessment of existing EU legal migration Directives

### Contents

1. Summary.....	1
2. Objectives and purpose.....	3
3. Scope of the study.....	4
4. Structure and specific tasks of the study:.....	5
Task I: Contextual analysis.....	6
Task II: Evidence gathering of the legal and practical application of the Directives.....	7
Task III: Consultation of the public and targeted stakeholders.....	10
Task IV: Evaluation task.....	11
5. Evaluation questions.....	12
6. Data collection.....	13
7. Risks.....	13
8. Work plan and organisation.....	13
9. Deliverables, overall timeline and duration of the contract.....	14
10. Budget.....	16
11. Quality assessment criteria.....	16
12. Background.....	16
Annex I : Descriptive questions.....	17
Annex II : Questions for the practical application study (Task II).....	19
Annex III: Evidence base, sources, references of key documents.....	26
Annex IV: (draft) Evaluation questions, with draft sub/research questions.....	31
Annex V: Draft Legal Migration Fitness Check Roadmap.....	35

## 1. Summary

Over the past years, the EU has developed a broad range of instruments on admission of different categories of legal migrants.

The "Blue Card"<sup>1</sup> and the Intra-corporate Transferee<sup>2</sup> Directives create a legal framework for highly skilled migrants; the revised Students and Researchers Directive<sup>3</sup>, recasting the Directive on Students<sup>4</sup> and the Directive on Researchers<sup>5</sup>, facilitates admission and intra-EU mobility of foreign students and researchers and provides for their right to stay on for 9 months to seek a job or set up a business; the Seasonal Workers Directive<sup>6</sup> - which will need to be fully transposed by Member States by end September 2016 – regulates the entry and temporary stay of seasonal workers, thereby facilitating circular migration and protecting this particularly vulnerable category of workers. In addition, the Single Permit Directive<sup>7</sup> offers a single permit combining both residence and work permit for third-country nationals, the Long Term Residents Directive<sup>8</sup> regulates the conditions and rights of residence for third-country nationals who have been residing in the EU for over 5 years, and the Family Reunification Directive<sup>9</sup> sets the conditions for entry and residence for family members of third-country nationals.

The EU is facing a series of long-term economic and demographic challenges. Its population is ageing, while its economy is increasingly dependent on highly-skilled jobs. Without migration, the EU's working age population will decline by 17.5 million in the next decade<sup>10</sup>. Migration will be an increasingly important way to enhance the sustainability of our welfare system and to ensure sustainable growth of the EU economy. A comprehensive and long-term approach to migration should therefore include a well-functioning system of legal migration channels for third-country nationals.

The need for further action at Union level to respond to the current challenges in the area of migration has been acknowledged in particular by the 2015 European Agenda on Migration. The Agenda called for a clear and rigorous common legal migration system, which reflects the EU interest, including by maintaining Europe as an attractive destination. Building upon the European Agenda on Migration, the 2016 Commission's Communication on the reform of the Common European Asylum System and enhancing legal avenues to Europe<sup>11</sup> called for a smarter and well-managed legal migration system and stressed the need to look at the migratory phenomenon in a broad and comprehensive manner, considering all the interlinks between the different aspects of migration, being regular or irregular, including the asylum policies.

The Communication announced different strands of action to further strengthen our legal migration policy and the Commission is pursuing them in parallel. In particular, the Commission has announced that it will launch a REFIT evaluation, with the overall objective of ensuring that legal migration policies are managed more effectively, by ensuring that the Union makes better use of all its existing instruments targeting different categories and skills of third-country nationals.

---

<sup>1</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Blue Card)

<sup>2</sup> Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

<sup>3</sup> Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. See annex III for full references to the impact assessment and proposal.

<sup>4</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

<sup>5</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research

<sup>6</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers

<sup>7</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (Single Permit)

<sup>8</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

<sup>9</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

<sup>11</sup> See the "European Agenda on Migration", COM (2015)240 final, 13.5.2015, as well as the Communication "Towards a reform of the Common Asylum System and Enhancing Legal Avenues to Europe", COM (2016)197 final, of 6.4.2016.

Against this background, the overall aim of this study is to pave the way for future reflection on whether there is a need to rethink the EU model of managing legal migration and define a more coherent and effective model of legal migration management at EU level.

To contribute to this overall aim, this study has a twofold objective: firstly to support a fitness check on the legal migration acquis and secondly to provide information on the practical implementation of the Directives in question. These two objectives are closely linked, but independent.

The **first general objective** of the study is to **support the Fitness Check of the existing acquis on legal migration**. The objective is to evaluate how the existing acquis on legal migration has contributed to the attainment of legal migration policy objectives and to identify overlaps, gaps, inconsistencies, synergies and the cumulative impacts of the legal instruments in this area. It serves to consider possible ways of simplifying and streamlining the current EU framework in this area. It contributes to the Commission's REFIT programme as it can help identify excessive administrative burdens, overlaps, gaps or inconsistencies that may have arisen over time and possible obsolete measures.

The Fitness Check on legal migration was first announced in the 2013 REFIT Communication<sup>12</sup>. In the 2014 Scoreboard<sup>13</sup>, it was further specified that the "Fitness Check on legal migration should cover the Directives on the EU Blue Card (2009/50/EC), Long-term residents (2003/109/EC) and the so-called "Single Permit" Directive (2011/98/EU)". The Scoreboard also stated that the scope might be reviewed upon launch of the Fitness Check in 2016.

The Fitness Check will serve as a basis to assess what actions (both legislative and non-legislative) might be required to improve the coherence of the legal migration framework, as well as to ensure a more effective application of the relevant Directives. The Directives subject to this study all have clauses requiring the Commission to review their implementation<sup>14</sup> and regularly publish implementation reports. The Fitness Check will take into account and build upon the assessments already carried out for the different Directives, including the Impact Assessments<sup>15</sup> related to the review of the EU Blue Card Directive (2009/50/EC)<sup>16</sup> and to the recent recast Directive (EU) 2016/801 on Students and Researchers (recast of Directives 2004/114/EC and 2005/71/EC). In addition to the three Directives that were initially foreseen to be included in the scope, the Fitness Check will therefore also cover the other legal migration Directives, albeit with a differentiated approach (see below under point 3).

The **second general objective**, related to compliance checking, aims at providing **an assessment of the practical application** of the Directives, by providing well-structured and objective information to the Commission to support it in its task of monitoring the implementation of the acquis by enabling it to detect cases of incorrect application and to take adequate steps to redress them. This assessment will also provide crucial information for the Fitness Check.

## 2. Objectives and purpose

The **general objectives** of the study are:

(1) to support a fitness check on the legal migration acquis, with a view to, inter alia, identify potential inconsistencies and gaps, streamline and simplify the rules currently in place, and

---

<sup>12</sup> Regulatory Fitness and Performance (REFIT): Results and Next Steps COM(2013) 685 final, 2.10.2013, p. 13 of the Annex.

<sup>13</sup> COM(2014)368 final, of 18.6.2015, with accompanying SWD(2014)192. Staff Working Document accompanying the Communication on "Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook"

<sup>14</sup> Article 19 of Directive 2003/86/EC, Article 24 of Directive 2003/109/EC, Article 21 of Directive 2004/114/EC, Article 16 of Directive 2005/71/EC, Article 15(1) of Directive 2011/98/EU, Article 21 of Directive 2009/50/EC, Article 27 of Directive 2014/36/EU, Article 25 of Directive 2014/66/EU and Article 39 of Directive (EU) 2016/801.

<sup>15</sup> See annex III for full references.

<sup>16</sup> Commission proposal for EU Blue Card review and IA. COM(2016)378 and SWD(2016)193/94 of 7.6.2016.

(2) to provide information on the practical implementation of the relevant Directives in order to support the Commission's monitoring of their correct application by the Member States.

The **specific objectives** include:

- a) To provide a brief analysis of the general policy and legal context of the EU migration policy as well as the background to and objectives of the legal instruments currently in force, to serve as a basis for the practical application study (task II), the public consultation (task III) and the evaluation (task IV).
- b) To analyse and describe the migration flows in the reference period, as well as potential external factors influencing migration flows, to serve as background for and input into the evaluation of relevance and EU added value of the specific instruments.
- c) To develop a intervention logic of each EU instrument as well as a combined intervention logic for all relevant instruments, showing how they interact with each other and with other relevant EU and national policies.
- d) To provide and assess evidence of how Member States implement the legal migration Directives, presenting the results per Member State, as well as horizontally at EU level to support the Commission's monitoring of the implementation of the legal migration Directives as well as to provide input to the assessment of effectiveness.
- e) To carry out in-depth evaluation of specific issues to identify if there are gaps and inconsistencies relating to specific categories of migrants, for instance international service providers (within the context of trade agreements) and to assess the effectiveness and relevance of measures in place, for example as regards the prevention and combating of labour exploitation.
- f) To investigate the costs and benefits linked to the implementation of the legal migration Directives, with a focus on assessing the efficiency thereof.
- g) To carry out a thorough analysis on each evaluation question (see Annex IV), providing all the necessary elements for the Commission to prepare the Fitness Check.
- h) To support the consultation of the public and targeted stakeholders.
- i) Based on the evidence found, to consider possible ways of simplifying, streamlining the current EU framework, as well as making the legal migration policies more effective in order to contribute to better managed legal migration flows and of reinforcing the EU as an attractive destination, which could be included in any follow-up to the Fitness Check.

### 3. Scope of the study

The legal, geographical and temporal scope of the study is based on considerations related to the legislative developments and current applicability of the legal migration acquis.

**Legal:** The study should cover all the legal instruments in the field of legal migration:

- Directive 2003/86/EC – Family reunification
- Directive 2003/109/EC – Long Term Residents
- Directive 2009/50/EC – EU Blue Card – highly skilled workers
- Directive 2011/98/EU – Directive on a Single Application/Permit and third-country workers' equal treatment (aka the Single Permit)
- Directive 2014/36/EU on Seasonal workers
- Directive 2014/66/EU on Intra-corporate transfers
- Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast of Directives 2004/114/EC on students and 2005/71/EC on researchers).

However, in view of the recent developments in the acquis on legal migration, a differentiated treatment of the different Directives should be applied in the study. The Directives adopted in 2014 (ICTs and Seasonal workers) have not yet been implemented (they do not need to be applied before the second semester of 2016 and the first statistics on their uptake are not expected before mid-2018). Furthermore, in view of the recent recast of the Students and Researchers Directives, it is also not possible to fully evaluate the new instrument

which will only become applicable in 2018. Finally, in view of the recent review of the EU Blue Card Directive, it is not envisaged to evaluate again that Directive and assess the impacts of possible changes thereto. Instead, this study should build upon the evaluation carried out for that Directive and continue with the evaluation of the other Directives, including the 2004 and 2005 Directives on Students and Researchers.

In consequence:

- All Directives will be the subject of the analysis of the descriptive questions (Annex I) and the evaluation of the Relevance and Coherence of the legal migration acquis (Annex IV).
- The analysis of the practical and legal implementation<sup>17</sup> should cover all the Directives already implemented (i.e. all except the Seasonal Workers Directive, the ICT Directive and the recast Students and Researchers Directive)
- The evaluation on the Effectiveness, Efficiency and EU added value of the legal migration acquis (see also Annex IV, Evaluation questions) will cover mainly the Family Reunification, the Long-Term Residents and the Single Permit Directives, but also EU Blue Card, based on the findings of the recent Impact assessment and evaluation leading to the review of that Directive.

To fully understand the implementation of the EU legal migration Directives, the study also needs, where relevant, to consider certain national competences, for example the admission conditions for third-country nationals not covered by EU legislation (i.e. admitted under national schemes) or the conditions for granting citizenship.<sup>18</sup>

**Temporal:** The baseline year chosen for the study is linked to the entry into force of the Amsterdam Treaty (1999) which was a pivotal step in the development of EU legislation and policy in the field of migration. The data used shall be as up-to-date as possible, and new data becoming available during the duration of the contract shall also be taken into account.

#### **Geographical:**

- EU related geographical scope: 25 of the EU Member States implement the EU acquis on legal migration, whilst Denmark has a general opt out in this area<sup>19</sup>, and Ireland and the UK<sup>20</sup> have chosen not to opt into these Directives.
- External dimension geographical scope: for the practical study in Task II, representative third countries shall be identified by the contractor.

The key stakeholders to be consulted are government administrations, trade unions, business, educational institutions, international organisations and civil society, including migrants' organisations (see further under Task III).

#### **4. Structure and specific tasks of the study:**

The study is divided into 4 separate but interrelated tasks:

Task I: Contextual analysis

---

<sup>17</sup> The legal compliance assessment will be based upon already carried out conformity assessments for Directives 2003/86/EC, 2003/10/EC, 2009/50/EC and 2011/98/EU, and the implementation reports issued or to be issued during the course of this project.

<sup>18</sup> To illustrate the relevance of such national competences for the Fitness Check, the eligibility criteria for citizenship can be mentioned. It is important to consider which conditions apply for granting citizenship to a third-country national, since in some Member State you can be granted citizenship before 5 years of legal and continuous residence, which may explain the low uptake of the EU Long-term resident status in those Member States, which requires a minimum of 5 year residence.

<sup>19</sup> In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark did not take part in the adoption of these Directives and is not bound by it or subject to its application.

<sup>20</sup> In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol (allowing for their possible future opt in), those Member States are not taking part in the adoption of these Directives and are not bound by them or subject to its application, with one exception regarding Ireland. The latter has opted out from all Directives except the Researchers Directive (2005/71/EC) and intends not to apply the new Recast Directive. The coverage of Ireland in this study shall therefore be proportionately limited.

Task II: Evidence gathering on practical implementation

Task III: Consultation of the public and targeted stakeholders

Task IV: Fitness Check/REFIT Evaluation

For each task, outcomes and deliverables are identified below. Section 9 includes the timeline for delivery of the outcomes.

The contractor shall throughout the process take into account any changes to the scope of the Fitness Check that may result from internal and external consultations.

### **Task I: Contextual analysis**

The objective of this task is to analyse the contextual background to enable the evaluation envisaged in Task IV, but also to support Tasks II and III. This analysis should be supported by the descriptive questions in Annex I. The work will consist in identifying the initial objectives of the overall policy as well as of the individual instruments, describing the historic evolution of the legal migration acquis and producing an intervention logic and statistical analysis (to the extent data is available) of the migration flows since the baseline year of 1999.

#### **Outcomes of Task I:**

The following outcomes are part of Task I and shall be prepared with a view to providing input to other tasks in the first instance but also to the overall Final technical report (*Page numbers are indicative*):

- A. Comprehensive collection of information available at EU, international and national level through desk research and synthesis of existing data, research, reports, studies with the purpose of establishing the current knowledge base on issues related to legal migration for the purpose of this Fitness Check. This should include the identification of relevant opinions, data and analysis by institutions, stakeholders and academia on the functioning of the legal migration acquis, in order to use that relevant documentation in all parts of the study. This outcome shall present the findings in a structured manner. Significant data and information gaps shall be specifically flagged. This shall feed directly into other deliverables in Task I as well as into other tasks. (20 pages synthesis - list of sources in annex).
- B. A contextual analysis, comprising an historical analysis of the development of the EU Legal Migration policy, including the initially stated objectives, a timeline and a statistical analysis of migration flows and other relevant parameters in the reference period (including demographic changes), as well as an outlook on possible future trends of migration flows of relevance for the Fitness Check (20 pages, plus annexes)
- C. A description of an intervention logic of the legal migration acquis which shall include the objectives, the intended impact and the added value as well as the relevant stakeholders. It shall incorporate a structured analysis (mapping) of other factors, including global and external factors, other EU policies and national policies that have had an impact on the legal migration flows in the reference period. The intervention logic shall also include a description of gaps, overlaps and/or inconsistencies among the legal migration Directives. The intervention logic for the whole legal migration acquis shall be based on an intervention logic for each of the Directives, incorporating the corresponding elements. (Max 30 pages)
- D. A preliminary identification of gaps for specific categories of third-country nationals and key issues for further in-depth investigation. At this stage, such an analysis is of a preliminary and scoping nature and should include a preliminary definition of the problem and its extent and an identification of the relevant literature/data. A full evaluation and analysis will be carried out under Task IV. The following categories and issues should be at least considered:
  - a. Specific categories of third-country nationals for which a legislative or needs gap has been identified in a preliminary stage (*See also Annex IV, research question EQ1B*). The following list is not exhaustive :



- i. international service providers not linked to commercial presence (contractual service suppliers and independent professionals) (*excluding ICTs that are covered by Directive 2014/66/EU*),
  - ii. certain categories of third-country transport workers, notably in aviation and road transport,
  - iii. medium and low-skilled workers other than seasonal workers (e.g. domestic workers),
  - iv. self-employed workers,
  - v. non-removable irregular migrants who are granted a toleration status,
  - vi. investors,
  - vii. third-country family members of non-mobile EU citizens or citizens of associated countries (EEA and CH).
- b. Key issues identified requiring further investigation. The following list is not exhaustive :
- i. exploitation of legally residing third-country workers (estimation of the extent of the problem, existing monitoring and remediation practices, legal consequences for third-country workers and employers)
  - ii. attractiveness of the EU as a destination (contributing factors to, comparison with other OECD destinations)<sup>21</sup>
  - iii. risks of brain drain for certain sectors and countries of origin (estimation of the extent of the problem, sectors and countries concerned, legal provisions in place)
  - iv. issues related to overstaying and transition into irregular stay
  - v. interaction with the asylum acquis, in particular as regards family reunification
  - vi. costs and benefits related to the implementation of the Legal migration Directives

Should other issues be identified during the course of the study or the Fitness Check process (additional categories, other key issues, etc), the list above may be amended and the draft deliverables shall be amended or complemented as appropriate.

#### Methodological needs:

The contractor shall identify a task leader and leaders for each outcome. The team shall include experts with adequate legal, economic and policy expertise to be devoted to this task.

The contractor shall first identify data needs and specific methodological needs and then develop proposals for specific methodologies and templates for the presentation of results. The proposed descriptive questions (Annex I) may be further developed in agreement with the Commission.

The task is largely descriptive and consists in processing and synthesizing a variety of sources (statistics, academic literature, legislative assessments (conformity), implementation reports, communications and legislative proposals, etc).

### **Task II: Evidence gathering of the legal and practical application of the Directives**

A crucial basis for this Fitness Check is to assess the current functioning of the legal migration legislation, examining the impact of the EU Directives, their national implementation and possibly national specific regimes.

To reach this objective, the questions set out in Annex II, regarding the practical implementation of the Directives, should be addressed.<sup>22</sup>

Some questions are not linked to specific Directives (such as the information gathering phase), some cover all Directives and some only those that are currently being implemented. The notable exceptions concern the Directives on Seasonal Workers and ICT which will only be applied from September and November 2016

<sup>21</sup> Taking into account recent studies on the issue, notably OECD (2016) Recruiting Immigrant Workers: Europe

<sup>22</sup> As a starting point, to be based upon the implementation reports already issued for some Directives, which focussed on the legal implementation, as well as conformity study reports.

respectively, and it is not timely to now verify how they are currently implemented. For the Directives on Students and Researchers, this task will cover the existing Directives, not the recast version, since the latter will only be applicable in 2018. Since the Commission is responsible for the monitoring of the implementation of the initial instruments and some provisions do not change, these will still be covered.

In the preparatory phase of this task, the contractor shall prepare a structured overview of all relevant aspects of the legal implementation of the Directives in the Member States (e.g. material and personal scopes, procedural guarantees and rights), on the basis of the conformity studies already carried out and which will be provided by the Commission, as well as other aspects of national competence which have an impact on the management of migration flows (e.g. naturalisation). This analysis shall help structure the rest of the task and shall be presented as an integral part of the report of this task.

In addition, a sample of 10 representative third countries shall be identified by the contractor in agreement with the Commission. The selected sample shall represent the different migration routes, countries of origin and categories of migrants that are relevant for the assessment and will be used to answer the questions in Annex II related to the situation in third countries.

This task will be carried out as an application study of the implementation of the Directives in all 25 Member States implementing the Directives. The task will follow the 8 "steps" of the migration process from the perspective of the migrants as set out below and as developed in Annex II:

1. Pre-application phase during which third-country nationals (and their family members<sup>23</sup>) seek information on the application procedure. Includes information provision of legal migration possibilities and conditions.
2. Preparation phase during which third-country nationals (and their family members) prepare to lodge their applications.
3. Application phase during which third-country nationals (and their family members) lodge their applications and their processing.
4. Entry and travel phase, including acquisition of the necessary entry and transit visas.
5. Post-application phase during which competent national authorities deliver the residence permit (*Please note that the system differs from Member State to Member State, and for some Member States permits are delivered prior to entry*).
6. Residency phase: Examination of how the third-country nationals are treated (equal treatment provisions). This includes renewals of residence permits and transition from one status to another, for instance from temporary to permanent residency or citizenship. It also includes certain aspects of integration, insofar as the relevant Directives are intended to support integration, and may include integration measures and conditions.
7. Intra-EU mobility phase: Travelling in the EU and moving to reside in another Member State and arriving in a second Member State.
8. End of legal stay, leaving the EU phase: Covers the procedures and experiences when a third-country national leaves the EU, either for a limited period (certain Directives allow certain periods of absence whilst residency status is maintained) or when they leave permanently (which includes for instance transfer of acquired pension rights, procedures for de-registering etc). It also covers over-stay and transit into irregular stay (*for transition to citizenship or long-term resident status see "step 6"*).

The schema above is a simplified presentation of a migration process, as the migration process for an individual may follow a different chronology.<sup>24</sup>

---

<sup>23</sup> The differentiation between family members and third-country nationals (as sponsors) may be relevant as there may be differences between the sponsor and family members in case of family reunification, and also depending on whether the family member is an adult or a child.

<sup>24</sup> Please note that some of the steps of the migration process can run in parallel.



The results will be used for the Fitness Check evaluation. They may also be a basis to support the Commission in its monitoring role.

Outcomes for Task II:

A. **Methodology** for the task, including proposed resources, timeline and research methodology, as well as proposed format of final task report, proposed templates for comparative tables for the final report (EU level synthesis and Member States specific annexes).

B. **Structured overview of the relevant aspects of the legal implementation of the Directives** (e.g. material and personal scopes, procedural guarantees and rights) in the Member States as well as other aspects of national competence which have an impact on the management of migration flows (e.g. naturalisation). This overview shall be designed to underpin task II, but also to contribute to other tasks of the study.

C. **Questionnaire for the survey** (based on the questions in Annex II) for the practical application study/survey.

D. A **sample** of 10 representative third countries shall be identified on the basis of different migration routes, countries of origin and categories of migrants that are relevant for the survey. It will involve the identification of representative categories of migrants in those 10 countries to address questions related to phases 1 to 4 in Annex II for the 25 Member States.

E. **Analysis of the results** of the survey presented in the format of a final report. The final report shall consist of an EU wide report with tables enabling a comparison between Member States, it shall include an assessment of the implementation of each step and it should not be longer than 80 pages. For each Member State, a specific summary shall be annexed. This report may be published separately at the end of the contract. In addition raw data shall also be made available separately to the Commission in an easily accessible format.

Methodological needs:

The assessment shall be based on both desktop research on procedures and interviews/field test of application procedures. The consultant shall aim at assessing each step/question (set out in Annex II) in situations as close to the reality as possible, whereby the information shall be gathered in realistic circumstances resembling that of real application processes.

The assessment shall cover the 25 Member States implementing all Directives, with Ireland in addition for the 2005 Researchers Directive.

This task shall be carried out in the first 9 months of the project.

The contractor shall identify one sub-task leader per Member State, which will coordinate the preparation of the Member State specific assessment.

### Task III: Consultation of the public and targeted stakeholders

The objective of this task is to support the consultation process required for the Fitness Check, in terms of preparation of questions for the public and targeted consultations, support to the management of the public consultation (using the "EU Survey tool"), analysis of replies and synthesis of the results. The task shall entail assistance in the identification of stakeholders and other general support for the process.

A first draft of the questions for the public and the targeted consultations shall be prepared by the contractor, to be finalised in agreement with the Commission.

The following types of consultations are planned:

- Public consultation, with a set of questions designed to identify key issues related to the evaluation criteria. The EU survey tool shall be used. The public consultation will be open for 12 weeks.
- Targeted questionnaires to be circulated to key groups of stakeholders and expert groups, notably via the European Migration Network, the Expert Group on Economic Migration, other relevant expert groups established by the Commission, relevant civil society organisations, and other relevant groups.

In this task, the contractor shall take into consideration recent relevant public and targeted consultations and build upon their results to avoid overlaps and to ensure continuity in the questions asked:

- The public consultation on the Review of the EU Blue Card Directive and on Economic migration, carried out between May and August 2015, as relevant for the Fitness Check.
- The public consultation on family reunification carried out in 2011 (Green Paper COM (2011)735 final) which aimed at determining if the Directive should be amended. The Commission finally decided to focus on enhanced implementation instead and, as a result, the Commission produced guidelines on the interpretation of the Directive in 2014 (COM (2014)210 final). The results of the consultation can be used in the Fitness Check as a starting point to determine possible gaps and inconsistencies in the Directive from a practical angle.
- Other consultation processes (Expert Group on Economic Migration) and the Platform for a Dialogue on Skilled Labour.

#### Outcomes of Task III

A. **A methodology** shall set out the proposed strategy for the public and the targeted consultations and include a first draft of questions for the different types of consultations foreseen and a proposed timetable for consultations. It should include an appropriate methodology to reach out to relevant stakeholders (e.g. international organisations, social partners, civil society, academics).

B. **Set of questions** for the 12 week public consultation and for the targeted consultations, in the correct format for publication.

C. **Results of the public and targeted consultations presented in a final report** The raw data must be provided separately in a database/file format that enables analysis of the replies. This report shall be subject to publication (max 80 pages) and shall be prepared in accordance with the Better Regulation requirements for the Report on Consultation activities. A Synopsis report of max 10 pages including graphs shall also be prepared.

#### Methodological needs:

This task includes the participation in approximately 6 targeted meetings, for which the precise timing will be defined during the implementation of the contract.

The public consultation, and the targeted consultations, shall take place in the first 9 months of the contract. If necessary, an additional round of targeted consultations may be required at the end of the evaluation process (Task IV). The contractor shall support the Commission in the use the existing consultation tools for

public consultations (EU Survey tool)<sup>25</sup> in compliance with the Better Regulation rules. The possibility of both a large volume of replies and a more restricted number of replies shall be considered in the project planning.

The targeted consultations entail consultations of different stakeholders that are interested in or affected by the legal migration acquis (some covered by existing expert groups or networks referred to above):

- Representatives of the public and private sector employers, and the business community, including employers and employers' associations (both large employers, start-ups and SMEs);
- Trade unions, at national and EU level;
- Private and public employment matching organisations, (international) recruitment organisations;
- Relevant national authorities of Member States (Ministries of the Interior, Employment, Economy or Business);
- Other relevant authorities of Member States, such as regional and local authorities, Consulates/embassies, statistical offices;
- Relevant international organisations (IOM, ILO, OECD, etc.) that have an interest in economic migration;
- Representatives of ecosystems for entrepreneurs (accelerators, incubators, venture capitalists etc.);
- Organisations and authorities of countries of origin;
- Third-country national migrant workers and entrepreneurs already residing, or having previously resided, legally in the EU;
- Third-country national migrant workers and entrepreneurs currently outside of the European Union but considering or having considered migrating to the EU;
- Student, alumni, researchers' associations and youth organisations regarding obstacles met by third-country students/researchers wanting to work/create businesses/study/research in the EU;
- Members of the European Parliament, notably LIBE Members including MEPs who have acted as rapporteur and shadow rapporteurs on the legal migration Directives or who have a special interest in legal migration;
- NGOs (advocacy, support network, (legal) assistance, services), migrants' organisations and other sectors as appropriate;
- Media, wider public;
- Academia.

The tasks will include in-depth interviews with key selected stakeholders.

The positions, ideas or objections of the various stakeholders consulted throughout the process must be duly reflected in the report.

#### **Task IV: Evaluation task**

The objective of this task is to carry out an in-depth analysis of the information gathered in all previous tasks and provide in-depth replies to the evaluation questions on the obligatory evaluation criteria of Relevance, Coherence, Effectiveness, Efficiency and EU Added Value.<sup>26</sup> The work under this task shall be based on the work carried out in Tasks I, II and III, but also on additional analysis and research required for each question.

The draft Roadmap for the Fitness Check is included in Annex V, and any possible changes to that Roadmap as a result of consultations shall be taken into account in Task IV.

---

<sup>25</sup> The contractor will be required to create an external ECAS account to use this instrument

<sup>26</sup> Commission's Better Regulation Guidelines

Under this task, based on the draft evaluation and research questions set out in Annex IV, the contractor shall propose specific research questions.

#### Outcomes for Task IV:

**A. Methodology:** This shall include the overall methodological approach and timeline for the carrying out of this task, including a first reflection on the research questions (Annex IV), and the methodological approach required to carry out the in-depth analysis. The methodology shall also include a first draft of the structure of the final report.

**B. Evaluation framework:** The evaluation framework shall include the final evaluation questions and the final research questions, taking into account the first public consultation and the targeted consultations, with proposals for specific evaluation tools and data sources (see Annex IV).

**C. Analysis of the evaluation questions** (see Annex IV): The contractor shall answer the research questions and, on this basis, draw conclusions on the evaluation questions.

**D. Topic specific analysis:** in-depth analysis taking into account outcomes of other tasks and the evaluation criteria and questions:

D.1 In-depth analysis of specific gaps and key issues, which were identified in the preliminary analysis in Task I, Outcome D, but may also cover other issues which are identified during the stakeholders' consultation. The analysis shall draw upon information and results of other tasks and shall conclude on the specific issues in a manner which allows to answer the evaluation questions.

D.2 An analysis of costs and benefits related to the implementation of the legal migration Directives, including the development of a typology of costs and benefits associated to the implementation of the Directives, and how these costs and benefits are distributed among stakeholders. This analysis shall include proposals for a methodological approach for the evaluation of the Efficiency criteria and shall aim at quantifying and analysing the specific costs and benefits as far as possible. Established methods such as qualitative cost benefit analysis and Standard cost model for estimating administrative costs shall be applied as a minimum. *(See also descriptive question 3C, Annex I)*

**E. A final report of the Fitness Check** which shall summarise outcomes C and D as well as the final reports of Tasks II and III. The format of the report shall be in line with the Better Regulation guidelines and be presented in a format that enables the Commission to prepare the Fitness Check conclusions.

#### Methodological needs:

The contractor shall ensure a flexible overall work method that enables them to carry out both kinds of assessments in view of possible changes that may occur in the process.

Each type of analysis shall provide sufficient level of detail to enable the Commission to draw its own conclusions for the purpose of the Fitness Check.

## **5. Evaluation questions**

Task I shall be carried out first, providing important background for the subsequent Tasks II and III and thereafter Task IV, which shall build upon all the previous tasks.

Draft evaluation questions have been identified for the draft Roadmap (see Annex V). A set of proposed research questions, based on the evaluation questions, is included in Annex IV.

The contractor shall, on the basis of these evaluation questions and the proposed research questions, propose more detailed research questions and methodologies to respond to them. The contractor shall at least consider the issues raised in the annex but those may be made more extensive and more detailed.

## 6. Data collection

The study shall be based on desk research (literature, reviews, and reports) as well as data gathering, expert meetings and interviews with key stakeholders.

Annex III sets out the minimum data sources to be taken into account. Under Task I, the contractor shall identify additional sources and analyse the information for the purpose of the other tasks. The research under Task II and the result of consultations (see Task III) are also an important source of information.

Available statistics and economic data from Eurostat, Member States, OECD, UN and other sources shall be analysed.

Previous relevant impact assessments, implementation reports, conformity studies, communications and strategies as developed by different European Commission services and other EU institutions as well as European Migration Network studies and ad hoc queries shall also be taken into account.

## 7. Risks

One of the risks inherent to this contract is that the consultation phase and potential policy developments may identify new issues and angles to be assessed. This needs to be reflected in the offer, and sufficient flexibility needs to be foreseen by the contractor.

Should there be a need to advance or delay the Fitness Check conclusions in time or to redefine some of the tasks or some of the aspects of the deliverables, the contractor needs to be ready to show adequate flexibility.

The contractor shall take into account any changes to the scope of the Fitness Check that may result from internal and external consultations.

Should data not be available to assess thoroughly any of the evaluation questions, this needs to be flagged as soon as possible to the Commission and possible alternatives should be proposed to enable an informed decision on how to proceed.

## 8. Work plan and organisation

Responsibility and management of the evaluation remain with the European Commission (Directorate General for Migration and Home Affairs). A **study steering group** will be set up to monitor the implementation of the contract. The study steering group may include external experts appointed by the Commission. The study steering group will follow the evaluation process, assess and review outcomes that the selected contractor will have to provide. It will also be instrumental in the provision of information to the selected contractor. The contractor shall take into account the comments and recommendations from the Commission and keep it regularly informed on the progress of the work.

In addition the Directorate General for Migration and Home Affairs has established an **Inter-service group**, which will be closely associated to the steering of the study.

The contractor will be requested to attend at least 9 meetings of the study steering group at the Commission's premises in Brussels. The contractor may be requested by the Directorate General for Migration and Home Affairs to prepare presentations on the progress and results of the evaluation and to attend external events.

The contractor shall appoint a coordinator and a main contact person for each task. The task coordinators shall be senior experts who are part of the core team which takes part in the study steering group meetings with the Commission, and who may be asked to attend external meetings with the Commission, such as for the targeted consultation activities.

## 9. Deliverables, overall timeline and duration of the contract

The **overall duration** of the tasks should not exceed **15 months**, commencing from the date of signature of the contract by the last of the two parties. The timelines and deadlines are indicative and may be subject to change.

All reports shall be delivered in English, in an electronic format compatible with the Commission's computer systems (MS Word and PDF format). The Executive Summary of the main Final Technical Report shall also be made available in French and German.

### Inception report:

The inception report shall be delivered within **4 weeks** of the signature of the contract and shall contain the following:

- Task I: Outcomes A to D: Outline of the deliverables for discussion
- Task II :
  - Outcome A: First deliverable for review
  - Outcome B: Outline of deliverables for discussion
- Task III :
  - Outcome A: First deliverable for review
- Task IV :
  - Outcome A: First deliverable for review
  - Outcome B: First version for discussion

After submission of the inception report, one **inception/kick-off meeting** will be organised between the contractor and the study steering group to finalise the work plan and the methodology for the work to be undertaken, and to discuss and clarify possible open questions and issues. Comments shall be taken on-board and revised versions of deliverables for review shall be submitted after the inception meeting.

### 1<sup>st</sup> Interim report:

The 1<sup>st</sup> interim report shall be delivered within **4 months** of the signature of the contract and shall contain the following:

- Task I
  - Outcomes A to D: First deliverables for review
- Task II :
  - Outcome B: First deliverable for review
  - Outcome C: First deliverable for review
  - Outcome D: First deliverable for review
- Task III :
  - Outcome B: First deliverable for review
  - Outcome C: first outline of the report for discussion
- Task IV :
  - Outcome B : First deliverable for review
  - Outcome C: First outline for review and progress report
  - Outcome D: First outline for review and progress report

The contractor may also present progress reports on any outcome. A meeting will be organised between the contractor and the study steering group after the submission of the first interim report to discuss and clarify possible open questions and issues. Comments shall be taken on-board and revised versions of deliverables for review shall be submitted after the meeting.



## 2<sup>nd</sup> Interim report

The 2<sup>nd</sup> interim report shall be delivered within **9 months** of the signature of the contract. It shall present the progress of the implementation of all tasks to that date and proposals for the implementation of the rest of the project.

The acceptance of this interim report will trigger the interim payment as provided for in Art. I.4.3 of the Framework contract.

It shall contain the following:

- Task I: Outcomes A, B and D : Final deliverables for agreement
- Task II :
  - Outcomes A, B, C and D : Final deliverables for agreement
  - Outcome E: first deliverable for review
- Task III :
  - Outcome A: Final deliverables for agreement
  - Outcome C: first deliverable for review
- Task IV
  - Outcomes A and B : Final deliverables for agreement
  - Outcome C: first deliverable for review
  - Outcome D: first deliverable for review
  - Outcome E: first deliverable for discussion

A meeting will be organised between the contractor and the study steering group after the submission of the second interim report to discuss and clarify possible open questions and issues. Comments shall be taken on-board and revised versions of deliverables for review and agreement shall be submitted after the meeting.

## Final report

The **final report** will be delivered (for approval) within **13 months** of the signature of the contract. It shall consist of all previously agreed deliverables and:

- Task I: Outcome C : Final deliverable for agreement
- Task II: Outcome E : Final deliverable for agreement
- Task III: Outcomes B and C : Final deliverables for agreement
- Task IV: Outcomes C, D and E: final deliverables for agreement

After submission, a **final meeting** will be organised between the contractor and the study steering group to discuss and clarify possible open questions and issues.

The Commission will either accept the report or inform the contractor of any comments within 20 days. The contractor shall modify the report according to Commission's requests, or duly explain why they cannot be accepted. A modified version of the report will be submitted within 20 days.

The acceptance of the final report will trigger the payment of the balance as provided for in Art. I.4.4 of the Framework contract.

Rights concerning the reports and those relating to its reproduction and publication will remain the property of the European Commission. No document based, in whole or in part, upon the work undertaken in the context of this contract may be published except with the prior written approval of the European Commission. The Commission reserves the right to undertake editorial changes to the final deliverables if considered necessary to ensure adequate quality for publication.

The contractor must deliver the final report to the Commission in English in electronic version (Word and PDF formats).

The Commission publication rules related to its "visual identity" policy shall be applied (graphic rules set out in the European Commission's Visual Identity Manual, including its logo).<sup>27</sup> The final report shall be issued as set out in each task description, keeping in mind the indicative page limits set for each deliverable, plus annexes. The final report should include an abstract (200 words maximum), and be complemented by an executive summary (6 pages maximum) in a separate document, both in at least English and French.

The **quality** of the final report shall be such that there is a clear connection between data, findings and conclusions, they shall be readable for non-specialists, they shall have logical structures, page-limit for the deliverables shall be respected as far as possible and all information required shall be included, including as annexes. The deliverables shall be delivered in a timely manner.

## 10. Budget

For this study, a maximum amount of EUR 650.000 is available.

An interim payment will be made when the second interim report, to be submitted 9 months after the signature of the contract, is accepted.

## 11. Quality assessment criteria

The overall quality of the final deliverables of the evaluation study will be assessed by the European Commission on the basis of the Commission's quality assessment framework, available at: [http://ec.europa.eu/budget/documents/evaluation\\_en.htm#table-8\\_0](http://ec.europa.eu/budget/documents/evaluation_en.htm#table-8_0).

The quality assessment criteria are an integral part of this ToR and are included in Annex VI.

## 12. Background

*Annexes provide further background.*

---

<sup>27</sup> The Visual Identity Manual of the European Commission is available upon request. Requests should be made to the following e-mail address: [comm-visual-identity@ec.europa.eu](mailto:comm-visual-identity@ec.europa.eu)

The Commission is committed to making online information as accessible as possible to the largest possible number of users including those with visual, auditory, cognitive or physical disabilities, and those not having the latest technologies. The Commission supports the Web Content Accessibility Guidelines 2.0 of the W3C.

For full details on Commission policy on accessibility for information providers, see:

[http://ec.europa.eu/ipg/standards/accessibility/index\\_en.htm](http://ec.europa.eu/ipg/standards/accessibility/index_en.htm)

Pdf versions of studies destined for online publication should respect W3C guidelines for accessible pdf documents.

See: <http://www.w3.org/WAI/GL/WCAG20-TECHS/pdf.html>

For graphic requirements please refer to the standard word template in Annex 1. The cover page shall be filled in by the contractor in accordance with the instructions provided in the template. For further details you may also contact [comm-visual-identity@ec.europa.eu](mailto:comm-visual-identity@ec.europa.eu).

In case you foresee other logos than the Commission logo, the additional logo may only be placed on the cover page of the study if they are one of the following categories:

- a logo duly authorised by the Secretary General and the Director-General for Communication of the European Commission;
- the logo of the author of the study (i.e. the contractor).

## Annex I : Descriptive questions

Key Legal migration Fitness Check descriptive questions		Indicative data sources / indicative methodology collection of data	Analysis methodology
<b>Descriptive question 1 :</b>	<b>Contextual analysis</b>		
A. What were the origins of the EU migration policy and the initially stated objectives of the establishment of an EU migration policy? The proposed starting point is the views expressed in Tampere 1999 (baseline year) and the Commission's Communications of 2000 and 2001, as well as the evolution of the Treaty.		Communications from the Commission, Council conclusions, TEC/TEU, TFEU, etc	
B. Examine the evolution of the legal migration policy, and identify which instruments were subsequently put in place on legal migration: - Examine the <u>overall objectives</u> of the current EU legal migration Directives in force Identify if there were specific significant milestones in the reference period - Identify the gaps and the stated reasons therefor, including the categories of third-country nationals currently not covered as per Section E of this Annex (based on, among other sources, the preparatory acts and the views expressed by the decision-making bodies and the Commission.)		Communications from the Commission, opinions of the decision-making bodies (from negotiations)	
C. Examine the specific instruments currently in force, in particular : - Objectives <u>per instrument</u> . - The intended added value at EU level, based on, among other things, the subsidiarity and proportionality considerations - The <u>intended</u> impacts (on the basis of the IAs, where available) for each instrument and the intended stakeholders.		Commission proposals for Directives, negotiation texts, Directives, academic literature.	
D. Examine the available statistics on the migration flows in the reference period (1999-2015) as well as the current migration stock for: - the categories of third-country nationals covered by the EU legal migration Directives, broken down into subcategories wherever data is available. - any other categories of migrants not covered by the Directives, including the categories listed in Section C2 of the Roadmap, - main countries of origin for each Member State and to the EU as a whole in the reference period. Based on statistical analysis, identify if there were significant changes in the migration flows and identify if possible the reasons thereof		Statistics from Eurostat, EMN statistics, publication from key actors (OECD, etc), national statistics sources.	
<b>Descriptive question 2 :</b>	<b>Intervention logic</b>		
A. Identify external factors influencing migration flows in the period 1999-2015, Consider at least: o Global factors such as economic development (of countries of origin and destination, including the EU region as a whole), conflicts, environmental reasons for displacement, etc o Specific national policies (such as parallel schemes, economic situation... ) o Demographic developments and projections		Literature review, statistics. Annual report on Immigration and Asylum (2009-2015), national contributions. EMN studies. Targeted consultation stakeholders (MS) (meeting/questionnaire)	
<b>Descriptive question 3 :</b>	<b>Gaps and key issues</b>		
A. The analysis of the specific categories <sup>28</sup> of third-country nationals currently not covered by the personal scope of the Legal migration Directives should cover : - description of the category (using existing legal definitions as far as possible) - numbers of third-country nationals concerned (statistical analysis) - current legal coverage by national legislation as well as in international legal context where relevant - identify from existing sources key challenges in relation to the categories in question - existing information on costs and benefits related to this group. - a targeted literature review in relation to the specific category		Literature review, practical application study, statistical analysis, legal assessment based partly on conformity studies.  Legislative analysis	
B. The analysis of the key issues shall include a targeted literature review in relation to the specific issue and a statistical and economic estimation of the extent to the problem.		Literature review, practical application study, legal assessment based partly on conformity studies.	
C. As regards the key issue on costs and benefits related to the implementation of the legal migration Directives, the analysis should include:		Literature, national data, economic	

<sup>28</sup> With regard to international service providers, the relevant categories in the context of this study are contractual service suppliers (CSSs) and independent professionals (IPs), who - with very limited exceptions - need to possess university-level qualifications as well as three to six years of professional experience. They are generally admitted for a cumulative period of not more than 6 months or for the duration of the contract, whichever is less.

<ul style="list-style-type: none"> <li>- a typology of the different types of costs and benefits associated with the implementation of the Legal migration Directives, and how these are distributed among stakeholders.</li> <li>- a focus on the administrative costs, also identifying costs related to the management of migration flows that fall outside of the scope of the exercise. The fact that, for certain categories of migrants, the Member States decide on the volumes to be admitted shall be taken into account.</li> <li>- a specific focus shall be placed on the effect the choices made in the implementation of the Directives has on the types of costs and benefits.</li> <li>- a quantification of the costs-and benefits, which includes economic data gathering and their analysis.</li> </ul> <p>Where it is not possible to complete this, the reasons therefor shall be clearly presented.</p>	<p>modelling</p>	
--	------------------	--

## Annex II : Questions for the practical application study (Task II)

**NB.** *The following description of the different migration phases of the migration process is a simplified presentation with the purpose of structuring the survey, and some steps may not follow this chronology. One example is that some Member States deliver the first residence permits prior to departure from the country of origin, others first allow entry on the basis of short or long-stay visas, and deliver residence permits in the respective Member State. Renewals of permits and change of status to Long-term residence status may also not follow this chronology.*

*The questions below shall be answered as far as possible.*

1. Pre-application phase during which third-country nationals (and their family members<sup>29</sup>) seek information on the application procedure. Includes information provision of legal migration possibilities and conditions.

- a. How easy is to find the appropriate websites or any other information channels (including those provided by diplomatic representations)? How easy is to find the appropriate information on the websites which provide guidance on how to apply for admission to the different EU Member States? How easy is it to access the information provided? In which language is the information provided?
- b. Is there any information provided upon request in administrations in third countries and in the country of destination? Where can third-country nationals get information on entry and residence in an EU Member State in their country of origin? Provide information regarding the one stop shop/decentralised info point established by the EU in cooperation with third countries authorities within the framework of migration national strategies.
- c. How useful for the application process is the information provided by competent national authorities in a general manner (e.g. *multilingual websites or leaflets ...*) or personalised guidance (*contact person, dedicated phone number*) and how user-friendly is it? Is it possible to have a personal contact? What, if any, waiting time applies for personal contacts?
- d. Which different options for admission are presented and how? Please provide a structured overview/catalogue of options available. (NB to be presented in a way that enables comparison with the options identified in the applicable legislation.) Indicate which options are based on EU Directives. Indicate how the admission procedures and conditions, including for instance pre-entry integration conditions, are presented. Present available information on applicable deadlines, charges, entry visa and any other relevant information.

2. Pre-application phase during which third-country nationals (and their family members) prepare to lodge their applications

- a. If possible, identify how much time is deemed to be needed to put together all supporting required/suggested documents and which are the costs involved? Please specify if this includes recognition of diplomas and qualifications (*please compare the costs with an appropriate comparator, such as average wage of the country of origin*)?
- b. How extensive is the information applicants must fill in their application forms and how relevant is it under EU law for the decision on the application?
- c. How user-friendly is it to fill in the application form (e.g. *whether the forms are multilingual, whether there is sufficient guidance provided in the form itself or in its annexes*)?
- d. Which documentation, in which format (*certified copies, originals, etc*), is needed to comply with the respective requirements for different admission procedures? (*for instance proof of employment or job offer, travel and identity documents, current residence, stable and regular resources where applicable, other?*). If a medical examination is required, please provide details of requirements and documentation needed. List all

---

<sup>29</sup> The differentiation between family members and third-country nationals (as sponsors) may be relevant as there may be differences between the sponsor and the family members in case of family reunification, and also depending on whether the family member is an adult or a child.

documents needed for each type of application. To be presented to enable a comparison with the requirements of the Directives.

- e. If the recognition of diplomas and qualifications is a condition for exercising a profession and thereby obtaining a permit, are the procedures and criteria clearly explained? How much time and money is needed for this procedure in itself? (*see also question 2.a*)
- f. If the application is based on having a job offer, which kind of proof is required of this offer? Signed contract or binding job offer? Is the salary indicated? Is it fixed or preliminary?
- g. For applications for family reunification, which proof of family ties shall be presented?
- h. Which, if any, pre-integration measures or conditions (requirements) are applied for the different categories? How easy is it to find information about conditions and possible courses given? Is it necessary to pass a test prior to the application is lodged? Is advice given to potential applicants?

### 3. Application phase during which third-country nationals (and their family members) lodge their applications

- a. How easy is it to lodge an application (*e.g. is it only possible to apply in the capital / in the consulate, or not*)?
- b. Shall the applicant submit one or several applications (or apply in different steps or to several authorities)? Describe the steps from the applicant's perspective.
- c. Is there one or more authorities (for example the consulate in the country of origin) involved in the process for lodging the application and for receiving the permit/decision? Please provide a list. How many and which national authorities are generally involved in the application procedure (from the perspective of the applicant, compared to the procedure laid down in legislation)? Is the authority delivering the permit different from the authority receiving the application?
- d. How high are the application fees (*please compare the fees with an appropriate comparator, such as the average wage*)? Are there any other obligatory associated fees (*for visa for instance*)?
- e. How long does it take to process the applications (*counting from the submission of an application to the notification of a decision*)? Is the deadline fixed and made public in advance? Compare the legally applicable deadlines in the Member States' schemes, and the EU Directive's deadlines.
- f. Which administrative or financial sanctions are imposed on the applicant (if any) for failure to apply within a given deadline (*please compare the sanctions with an appropriate comparator, such as the average wage*)? Does such a failure to apply lead to cancellation /rejection of the application? Please specify the case for first applications (for renewals see section 6).
- g. Describe the procedural steps if the application is made in the third country and the residence permit is also delivered whilst the person is still in the third country (*option chosen in some MS for the Single permit, Blue Card, Family Reunification*)?
- h. Can the application only be done in the Member State, or is the permit only delivered on the territory of the Member State? If so, is an entry visa required? Is there a facilitated process for this? Please describe.
- i. In which way is the applicant informed of the decision? Is the notification done in writing? Is there one or more administrative acts/decisions issued?
- j. In case of a rejection of the application, are the reasons for the rejection provided in writing (and in which language)?
- k. Which are the appeal procedures open to the applicants, and how can they be accessed when the third-country national and/or his/her family is in the third country?



- l. In case of administrative silence, which are the consequences? Is it regulated by national law? Which are the redress procedures? Is the applicant informed of the redress procedures? How?
- m. If the main applicant is the employer rather than the third-country worker him/herself (options for the Single Permit, EU Blue Card) how is the third-country national involved (if at all) and informed of positive or negative decisions?
- n. In case of pre-departure conditions (*and/or measures*), which are the conditions, and how are they taken into account in the application (*part of application, or to be complied with during application period*)? Which documentation is required? Which costs (if any) are involved in complying with pre-departure conditions or taking part in pre-departure measures?
- o. If the application is incomplete, is the applicant informed of this and of which documents are needed and by which deadline? If the duration of the application procedure is interrupted until the missing documents are provided (in case the application is incomplete), how and how rapidly is the applicant informed? How much time is given to the applicant to complete the application?

#### 4. Entry and travel phase: including acquisition of the necessary entry and transit visas

- a. If the applicant does not yet hold a valid permit, how easy is it to acquire the necessary entry visa needed? How long is needed to acquire the necessary visa?
- b. If the applicant holds a valid permit and a valid travel document, is he/she able to enter and re-enter the Member State of residence only on the basis of the permit? If the permit is issued in a Schengen Member State, is the person able to travel to other Schengen Member States only on the basis of the permit and a valid travel document?
- c. In case the third-country national is a national of a visa free country are there any specific requirements?
- d. In case where the residence permit was delivered in the third country and no additional visa was required to enter the Member State, were there any obstacles to leave the country of origin, enter the country of destination or to transit?
- e. If the main applicant is the employer (Single Permit, EU Blue Card), who requests the initial entry visa (*is the employer involved or exclusively the third-country national*)?
- f. Which procedures apply upon the arrival in the country of destination? For instance, does the person need to register with local authorities or social security institutions within a certain timeframe, etc?

#### 5. Post-application phase during which competent national authorities deliver the permit

- a. How long on average does it take for the residence permit to be delivered after notification? Are there any additional charges for the delivery (*in addition to application fees*)?
- b. How many and which national authorities are generally involved in the application procedure (*from the perspective of the applicant, compared to the procedure laid down legislation*)? Is the authority delivering the permit different from the authority receiving the application?
- c. To what extent do national authorities make a difference between EU citizens and their non-EU family members, on one hand, and other third-country nationals, on the other hand?

- d. What is the duration of the permits delivered? *(Please provide statistics)*
- e. If the main applicant is the employer (Single Permit, EU Blue Card), is the employer involved in the delivery of the permit or just the third-country national?

6. Residency phase : Examination of certain aspects of how the third-country nationals are treated (equal treatment provisions), including renewals of residence permits and other.

- a. How useful are residence permits for their holders *(see also point d on employment related rights)*:
  - i. Is the format as set out in Regulation (EC) No 1030/2002 used (if possible provide specimen)? Are biometric data included?
  - ii. Does the residence permit have a mere declaratory value *(i.e. that it only attests to the fact that the conditions attached to the right of residence by EU/national law were satisfied at the date of issue)* or a constitutive nature *(i.e. whether possession of a valid residence document creates legal assumption that the residence is legal)*?
  - iii. To what extent are residence permits giving the right to the third-country national to move freely on the whole territory of the Member State? Are any restrictions imposed?
  - iv. [to be answered for Member States applying the Schengen acquis in full] to what extent are residence permits (together with a valid travel document), giving the right to the third-country national to enter into and move freely within the territory of another EU Member State applying the Schengen acquis in full? When the Member State in question is the second Member State, are third-country nationals holding permits from other Member States accepted in the same manner for this purpose?
  - v. To what extent are residence permits required as a legal document for other administrative procedures *(e.g. for the completion of any other administrative formalities, such as access to education or other public or private services, such as buying a fixed telephone subscription, social security registration, etc. )*
- b. Validity and renewal of residence permits :
  - i. Which is the duration of validity of the issued residence permits?
  - ii. Which charges, if any, are imposed on the applicant for renewals?
  - iii. Does national or EU law impose a direct or indirect requirement to renew valid residence documents, and of so under which conditions *(in particular deadlines, evidence of fulfilment of criteria if so which)*? Are these conditions compliant with conditions of EU Directives where applicable?
  - iv. Which procedures apply for renewal or extension of permits? Which authorities are responsible? Does a single procedure apply (where relevant)? Are these different compared to the first application? Are administrative or financial sanctions imposed on the applicant (if any) for failure to apply within a given deadline
- c. Change of status and naturalisation :
  - i. If a person wishes to change status, which procedures and conditions apply and are the procedures clear? *(Examples are from family reunification permit to autonomous permit, from student to employment based permit, from EU Blue Card or other temporary work permit to Long-term resident permit?)*.
  - ii. In which circumstances are third country nationals required to change status? *(Examples are change of employer or occupation)*.

- iii. For applications for long-term residence, how shall proof of continuous and regular residence be presented?
  - iv. Which administrative or financial sanctions are imposed on the applicant (if any) for failure to apply within a given deadline (*please compare the sanctions with an appropriate comparator, such as average wage*) for applications for change of permit/status?
  - v. Which are the requirements for obtaining the nationality of the host Member State? Which are procedures and is information easily obtainable and clear of applicable rules and procedures?
- d. Employment related rights on the basis of a permit
- i. If access to the labour market is given, is this indicated on the card, and if so how? Which information is stored on the chip (if used)? Are additional documents issued related to the permission to work and/or reside in the country? Does the permit indicate the right to work in the case of certain categories of third country nationals that do not require a work permit?
  - ii. Is the permit and work permission limited to one specific employer, type of employment or general permission to work (*or other option*)?
  - iii. If the permit is linked to one employer, which are the procedures and how long does it take to change permit? Which are the sanctions for not changing permit? Which other restrictions apply?
- e. Equal treatment: third-country nationals should according to a number of EU Directives<sup>30</sup> be subject to equal treatment compared to nationals of the host country.
- i. Are there any identified restrictions for third-country nationals enjoying equal treatment compared to nationals in terms of the following (*the possible exemptions allowed under EU law shall be taken into account and described*):
    - \* working conditions, including pay and dismissal as well as health and safety at the workplace
    - \* freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations
    - \* Social security benefits listed in Article 3 of Regulation 883/2004
    - \* education and vocational training
    - \* recognition of diplomas, certificated and other professional qualifications in accordance with the relevant national procedures
    - \* tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned
    - \* access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law

---

<sup>30</sup> Directives 2011/98/EU, 2003/86/EC, 2009/50/EC, 2005/71/EC, , 2014/36/EU , 2014/66/EU and as appropriate Recast Directive (EU) 2016/801. There are slight variations between the Directives.

\* advice services afforded by employment offices

- ii. Are third-country nationals not covered by these EU Directives enjoying equal treatment compared to nationals in terms of the points raised above? Please specify by type of right and category of third-country national.
  - iii. Provide information of specific mechanisms at national level aimed at monitoring labour exploitation of third country nationals. What are the consequences/sanctions in place in situations of labour exploitation? Provide information, statistics if available, of labour exploitation of third country nationals. Are there any other specific measures in place in Member States to prevent labour exploitation of third country nationals?
- e. Integration: to be considered to the extent that it has an impact on the residence status or application procedures for renewal and extensions:
- i. Which procedures and conditions apply in terms of integration? Are there obligatory or voluntary measures in place? (Such as language courses, civic education courses etc)?
  - ii. What is the effect of not taking part in integration measures?

7. Intra-EU mobility phase. Travelling in the EU and moving to reside in another MS and arriving in a second Member State

- a. For the second Member State<sup>31</sup> : Which conditions and procedure apply for applicants who apply for residence and work permit who at the moment of the application hold a residence permit from a first Member State? Are there any differences compared to first arrivals on one hand, and mobile EU citizens on the other hand? Is there any difference between EU Long term resident permit holders and EU Blue Card holders<sup>32</sup> on one hand, and person's national permits on the other? What are the rights for family members of the mobile third country nationals? Are there any differences in the rights granted to family members under the EU instruments and national permits?
- b. Which documents are required by the second Member State as evidence of residence in the first Member State?
- c. In relation to the questions raised for Phase 1-5, are there any differences between newly arriving third-country nationals and intra-EU mobile third country nationals?
- d. How in practice is short term mobility (work travel, study exchange, holidays) ensured ? Does EU residence permits suffice, in addition to valid travel documents?

8. End of legal stay, leaving the EU phase. Covers the procedures and experiences when a third-country national leaves the EU, either for a limited period (certain Directives allow certain periods of absence whilst residency status is maintained) and when they leave for good (which includes for instance transfer of acquired pension rights, procedures.

- a. When a third-country national chooses to return to the country of origin or other third-country, which procedures apply? (Example, obligatory deregistration, returning of the permit etc)
- b. Specific equal treatment provision apply according to some EU Directives for the export of certain social security benefits including pensions, tax contributions when a person moves to

---

<sup>31</sup> For the definition of the first and second Member State, see Article 2 of Directive 2003/109/EC.

<sup>32</sup> Also Directives 2014/66/EU, 2005/71/EC and 2004/114/EC contain provisions on intra-EU mobility.

reside in a third country. Is the information about this easily accessible? Is there any identified obstacle to such transfers?

- c. How long absence from the EU or from the MS in question is tolerated without the loss of residence permit/right? Which documentation is required to prove that the absence did not exceed the allowed period? Is absence from the EU territory possible when awaiting for delivery/renewal of their permit?
- d. Are there procedures and conditions in place for circular migration, for instance for specific sectors of workers?
- e. What happens when a person overstays deliberately, and transits into irregular stay?
- f. Which are the procedures in place for third-country nationals who lost their right to stay in a Member State and who cannot be returned?

## Annex III: Evidence base, sources, references of key documents

(NB. The list below is indicative and not exhaustive.)

### **(D.1) Evidence from monitoring**

The following Eurostat statistics of relevance are gathered:

- Residence permits issued each year (by reason, including for different types of remunerated activities, for LTR, EU Blue Cards, Single Permits) as 1<sup>st</sup> permits, renewals and changed, well as the stock of migrants residing in the EU for different reasons and with different permits.
- Demographic and migration statistics
- Labour market and social situation indicators, including from the LFS ad hoc module 2008 and 2014

### **(D.2) Previous evaluations and other reports**

#### **Impact assessments and underlying studies (if published):**

- Blue Card, including consultation on Economic migration (EU Blue Card review and IA. COM(2016)378 and SWD(2016)193/94 of 7.6.2016.
- Students and Researchers recast (2013, SWD(2013) 77))
- Seasonal workers (2010, SEC(2010) 887)
- ICTs (2010, SEC(2010) 884)
- Single Permit (2007)

#### **Studies:**

- Severe labour exploitation: workers moving within or into the European Union at <http://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union>.
- OECD, Matching Economic Migration with Labour Market Needs (2014)<sup>33</sup>
- OECD/European Union, Review of Labour Migration Policy in Europe. The OECD/EU review aims to assess to which extent the EU, as a destination region for labour migrants from outside the Union, can compete on the global labour market for skills, and to which extent EU policy instruments have helped to foster EU attractiveness. It aims to provide recommendations to increase the attractiveness of the EU as a single labour market and to improve the efficiency of EU instruments geared towards managing labour migration. The review encompasses a number of thematic papers and a synthesis report, and were published on 7 June 2016 under the title: **Recruiting Immigrant Workers: Europe 2016**. It is co-funded by the European Commission's DG Home Affairs and the OECD.<sup>34</sup>

#### **European Parliament studies, such as for example:**

- [Exploring new avenues for legislation for labour migration to the European Union](#), 2015
- [Comparative study of the laws in the 27 EU Member States for legal immigration, including an assessment of the conditions and formalities imposed by each member state for newcomers](#), 2008

#### **European Migration Network (EMN) studies<sup>35</sup>:**

- Study on Mixed migration flows and change of status (EMN study) (ongoing, to be delivered in 2016)
- [Determining labour shortages and the need for labour migration from third countries in the EU](#) (EMN study) (2015)
- [Admitting third country nationals for business purposes](#) (EMN study) (2015)
- [Migrant access to social security and healthcare: policies and practice](#) (EMN Study) (2014)
- [Attracting Highly qualified and Qualified third-country nationals](#) (EMN Study) (2013)
- [Intra-EU mobility of third-country nationals](#) (EMN Study) (2013)
- [Immigration of International Students to the EU](#) (EMN study) (2012)
- [Misuse of the Right to Family Reunification: Marriages of convenience and false declarations of parenthood](#) (EMN Study) (2012)
- [Visa Policy as a Migration channel](#) (EMN Study) (2012)
- [Labour Demand](#) (EMN Study) (2011)
- [Temporary and Circular Migration: empirical evidence, current policy practice and future options in EU Member States](#) (EMN Study) (2011)

<sup>33</sup> <http://www.oecd.org/eu/matching-economic-migration-with-labour-market-needs.htm>

<sup>34</sup> <http://www.oecd.org/migration/mig/recruiting-immigrant-workers-europe-2016-9789264257290-en.htm>

<sup>35</sup> See database on: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/index_en.htm)



### Relevant EMN Ad Hoc Queries<sup>36</sup>:

The following selected are indicative examples of ad-hoc queries to be considered.

- 166. Permits for highly skilled workers, 22 October 2009
  - *(Addressed to only 6 MS by FR): national permits granted to HSW prior to Blue Card, and relevant statistics*
- 171. Admission to labour market, 3 November 2009
  - *The identification of labour shortages and their effect on admission of TCN workforce*
- 181. Labour market legislation limiting TCNs access, 24 November 2009
  - *Overview of policies limiting TCN's access to labour market*
- 218. Skilled immigration, 20 April 2010
  - *Effects of downturn on the immigration of HSW*
  - *Immigration of medical staff*
  - *Brain return/circulation due to lack of opportunities in the host MS*
- 236. Employment and work of aliens, 16 June 2010
  - *How MS regulate the position of domestic/EU/TCN workforce when the employer is a natural person (typically a household)*
- 271. Recognition of professional qualifications, 3 November 2010
  - *Procedures in the recognition of qualifications obtained outside of the EU*
  - *Cooperation with third countries in this respect*
- 368. Transposition of article 6 of directive 2009/50/EC, 24 January 2012
  - *Volumes of admission*
- 388. Establishing a complex monitoring system for TCN employment, 14 March 2012
  - *Systems in place in MS to oblige the employer to inform an authority of when a TCN worker begins/ends actual employment*
- 465. Issuing EU Blue Cards to third country nationals, 26 April 2013
  - *Average processing times taking into account acquiring all necessary documentation (incl. qualifications)*
  - *Labour market test*
- 502. Holders of EU Blue Cards: registration and distinction of first issue and change of status, 9 January 2014
  - *DE asks if also in other MS the majority of BC holders were previously holding another residence title*
- 525. Ethical recruitment, 31 January 2014
  - *Ethical recruitment of healthcare professionals: COM query in view of an EU Action Plan*
  - *Legislative measures under the Blue Card Directive*
  - *Policies for the facilitation of temporary and circular migration*
  - *Agreements with third countries*
- 554. Pre-departure campaigns to attract TCNs, 3 July 2014
  - *Measures to promote work and study opportunities in the MS to potential TCN migrants abroad (not specific to HSW)*
- 529. Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (“EU Blue Card Directive”), 4 March 2014
  - *Questions on available Blue Card statistics and ethical recruitment*
- 565. Requirements for Operating a Business Activity, 30 July 2014
  - *What is required for a TCN (i) already resident in the country or (ii) planning to enter into the country to start a business activity*
- 561. Asylum seekers' access to labour market, 3 July 2014
  - *Different policies in granting asylum seekers access to labour market and reasons behind these policy choices*
- 576. Policies for circular migration, 13 August 2014
  - *Policies to promote circular migration, incl. agreements with third countries in this respect*

### (D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

#### Implementation reports:

First implementation report Family reunification (2009)  
First implementation report Long Term residents (2011)  
First implementation report Students (2011)  
First implementation report Researchers (2011)  
First implementation report EU Blue Card (2014)

#### Planned Implementation Reports

First implementation report Single Permit (2016)

---

<sup>36</sup> See database on: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/index_en.htm)

Second implementation report Family reunification (2016)  
Second implementation report Long Term residents (2016)

**Conformity studies:**

Conformity studies – legal migration Directives (ongoing): EU Blue Card\*, Long Term Residents (final report of November 2015), Family Reunification, Single Permit

**Other:**

Family Reunification Guidelines  
Annual Reports on Immigration and Asylum (2009-2014)

**Evidence from complaints and infringement procedures (non-public material to be provided directly to the consultant, on the condition that procedures are kept confidential):**

Further information to be provided to contractors as relevant.

**Key Case Law :**

- Case C-309/14 CGIL and INCA, judgement of 2 September 2015
- Case C-153-14 K & A, judgement of 9 July 2015
- Case C-579/13 P & S, judgement of 4 June 2015
- Case C-491/13 Ben Alaya, judgement of 10 September 2014
- Case C-338/13 Noorzia, judgement of 17 July 2014
- Case C-469/13 Tahir, judgement of 17 July 2014
- Joined cases C-356/11 and C-357/11 O & S, judgement of 6 December 2012
- Case C-502/10 Singh, judgement of 18 October 2012
- Case C-15/11 Sommer, judgement of 21 June 2012
- Case C-508/10 Commission v. The Netherlands, judgement of 26 April 2012
- Case C-571/10 Kamberaj, judgement of 24 April 2012
- Case C-578/08 Chakroun, judgement of 4 March 2010
- Case C-540/03 European Parliament v. Council, judgement of 27 June 2006

**(D.4) Consultation**

Result of consultations (as carried out in this study, as well as recent relevant consultations notably :

- EU Blue card review consultation 2015
- Family reunification Green paper related consultation (2011)
- Other

**(D.5) Studies/Research from other Commission Directorates General**

- DG ECFIN: "European Economic Forecast" (Autumn 2015) – [http://ec.europa.eu/economy\\_finance/publications/](http://ec.europa.eu/economy_finance/publications/).
- DG EMPL: Equal treatment obligations under EU instruments for third-country nationals (Report prepared under Contract No VC/2013/0300 - FreSsco May 2015)
- DG TRADE : Trade for all — Towards a more responsible trade and investment policy", Communication outlining the European Commission's new trade & investment strategy. [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)
- DG RTD: Research on Migration: facing realities and maximizing opportunities. A policy review, ISBN 978-92-79-52977-1 (January 2016)
- DG RTD: Understanding and tackling the migration challenge. The role of research, ISBN 978-92-79-58022-2 (2016)
- DG RTD: Research & Innovation Projects in support to European Policy. Migration and Mobility, ISBN 978-92-79-53985-5 (2016)
- DG RTD: Population ageing in Europe. Facts, implications and policies, ISBN 978-92-79-35063-4 (2014)

**(D.6) Further evidence to be gathered**

- Residence permit data for the year 2015 will be made available through Eurostat mid-2016. Also statistics for 2016 shall be taken into account as far as these are made available in 2017.

If necessary, ad-hoc queries will be issued to Member States addressing specific questions.

#### **(D.7) Non-exhaustive selection of studies from international organisations and think tanks:**

- OECD (2002), "Service Providers on the Move: a Closer Look at Labour Mobility and the GATS", Working Party of the Trade Committee, TD/TC/WP (2001)26/FINAL, Paris, 20 February 2002.
- OECD (2002), "Service Providers on the Move: the Economic Impact of Mode 4", Working Party of the Trade Committee, TD/TC/WP (2002)12/FINAL, Paris, 19 March 2003.
- World Trade Report 2004: [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/world\\_trade\\_report04\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report04_e.pdf)
- European Policy Centre (EPC), 2014, "Measures and rules developed in the EU Member States regarding integration of third country nationals":  
[http://www.epc.eu/documents/uploads/pub\\_6519\\_reportintegrationschemesfinalversionpdf-en.pdf](http://www.epc.eu/documents/uploads/pub_6519_reportintegrationschemesfinalversionpdf-en.pdf)
- The Economist Intelligence Unit. 2016. "Measuring Well-Governed Migration: The 2016 Migration Governance Index." [http://www.iom.int/sites/default/files/our\\_work/EIU-Migration-Governance-Index-20160429.pdf](http://www.iom.int/sites/default/files/our_work/EIU-Migration-Governance-Index-20160429.pdf)

#### **(D.8) Non-exhaustive selection of recent academic and think tank publications:**

- Aksakal, M., Schmidt-Verkerk, K., 2015. Internal report on conceptual classifications, Document from the EURA-NET project, <http://www.uta.fi/edu/en/research/projects/euranet/publications/Conceptual%20Framework%20on%20Temporary%20Migration.pdf>
- Boeri, T. (ed.) (2012) Brain Drain and Brain Gain. The Global competition to Attract High-Skilled migrants. Oxford University Press
- Boswell, C., Stiller, S., Straubhaar, T. (2004) Forecasting Labour and Skills Shortages: How Can Projections Better Inform Labour Migration Policies? EC, DG Employment and Social Affairs
- Brunow, S., Brenzel, H. (2012) The effect of a culturally diverse labour supply on regional income in the EU, *Empirica*, Vol. 39, No. 4, S. 461-485. Publication by project "Migrant Diversity and Regional Disparity in Europe" MIDI-REDIE
- Czaika, M. and de Haas, H. (2001) On the effectiveness of Immigration Policies. IMI working Paper
- Desiderio, M. V. (2014) Policies to support immigrant entrepreneurship'. MPI August 2014
- Devitt, C. (2011) Varieties of Capitalism, Varieties in Labour Immigration. *Journal of Ethnic and Migration Studies*, 37(4)
- Doomernik, J., Koslowski, R., Thränhardt, D. (2009) The Battle for the brains: why immigration policy is not enough to attract the highly skilled. FMG: Institute for Migration & Ethnic Studies (IMES)
- Eisele, K., Why come here if I can go there? Addressing the attractiveness of the EU's Blue Card Directive for 'Highly Qualified' immigrants, Working Paper no. D182 from the project NEUJOBS, September 2013  
[http://www.neujobs.eu/sites/default/files/WP\\_NEUJOBS\\_K.Eisele\\_18.2\\_0.pdf](http://www.neujobs.eu/sites/default/files/WP_NEUJOBS_K.Eisele_18.2_0.pdf)
- Helbling, M., Bjerre, L., Römer, F., Zobel, M. eds. (2013) How to measure immigration policies." Migration and Citizenship. Newsletter of the American Political Science Association. Organized Section on Migration and Citizenship 1(2): 4-8.
- Koslowski, R. (2014) Selective Migration Policy Models and Changing Realities of Implementation. *International Migration*, 52(3)
- La Barbera, M.C., Arango Vila-Belda, J., Finotelli, C., "Inventory of visa policies and agreements: Italy, Spain, France, and the United Kingdom" – Deliverable by project "Temporary versus Permanent migration" TEMPER ( April 2015)
- MAFE policy brief No. 1, Migration between Africa and Europe, Deliverable by project "Migration between Africa and Europe" MAFE
- MAFE policy brief No. 2, Changing patterns of migration between Africa and Europe: Departures, trajectories & returns Deliverable by project "Migration between Africa and Europe" MAFE
- Malchow-Møller, N., R. Munch, J., and Rose Skaksen, J., (2011) Do Foreign Experts Increase the Productivity of Domestic Firms? Evidence from Denmark - Deliverable by project "Temporary migration, intergration and the role of policies" TEMPO
- Peers, S., Guild, E., Acosta Arcarazo, D, Groenendijk, K., Moreno-Lax, V. (ed.), (2012) EU Immigration and Asylum Law (Text and Commentary). Second Revised Edition
- Pitkänen, P., Korpela, M., (eds.) 2015. Characteristics of temporary transnational migration, Collected Working Papers from the EURA-NET project,  
<http://www.uta.fi/edu/en/research/projects/euranet/publications.html>
- Rinne, U. (2012) The Evaluation of Immigration Policies. IZA Discussion Paper
- Ruhs, M. (2013) The Price of Rights. Regulating International Labor migration. Princeton University Press

- Baas, T., Brücker, H., (2012) The macroeconomic consequences of migration diversion: evidence for Germany and the UK, Deliverable by project "Temporary migration, integration and the role of policies" TEMPO

## Annex IV: (draft) Evaluation questions, with draft sub/research questions

RELEVANCE (Question to cover all Legal migration Directives, unless otherwise specified)	EQ 1: 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?			
Evaluation question	Sub-question / research question	Judgement criteria	Indicative methodology: data collection	Indicative methodology: analysis
<b>EQ 1: 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>	EQ 1A: To what extent are the original objectives still relevant?			
	EQ 1B: To what extent does the <u>scope of the legislation</u> match the current needs in terms of the <b>categories of third-country migrants initially intended to be covered by the legislation</b> ? Based on an analysis of migration flows (based on migration data, labour market needs, demography) identify if any specific relevant other categories of potential third-country national migrants that are not covered by EU legal migration legislation. At least the following categories and possible other categories listed in section C.2 of the Roadmap shall be considered: <ul style="list-style-type: none"> <li>• Certain categories of third-country transport workers, notably in aviation and road transport</li> <li>• international service providers not linked to commercial presence (contractual service suppliers and independent professionals) (<i>excluding ICTs that are covered by Directive 2014/66/EU</i>),</li> <li>• admission conditions for medium and low-skilled workers other than seasonal workers (e.g. domestic workers),</li> <li>• self-employed workers,</li> <li>• non-returnable irregular migrants who are granted a toleration status,</li> <li>• investors,</li> <li>• third-country family members of non-mobile EU citizens or citizens of associated countries (EEA and CH).</li> <li>• Other categories identified in the process</li> </ul> <p>If a relevant category is found not to be covered by the legislation, identify the impact of such exclusion.</p>			
	EQ 1C: To what extent does the scope of the legislation, and the way it is implemented match the current needs in all the <u>different steps of the migration process</u> and different <u>specific aspects of migration</u> ? 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).  At least the steps of the migration process described in Annex II (for task II) should be covered. <ol style="list-style-type: none"> <li>1. Pre-application phase</li> <li>2. Preparation phase</li> <li>3. Application phase</li> <li>4. Entry and travel phase</li> <li>5. Post-application phase</li> <li>6. Residency phase:</li> <li>7. Intra-EU mobility phase</li> <li>8. End of legal stay, leaving the EU phase</li> </ol>			
	EQ 1D: Are there obsolete measures (legislative /non-legislative)?			
	EQ 1E: To what extent is the way Member States implement the Directives relevant to the initial objectives, and to what extent is the way they are implementing the Directives relevant for current needs?			
	EQ 1F: Is the legislative framework at EU level, and the way Member State implement the Directives, relevant in view of <u>future</u> challenges (including at least demographic, labour and skills shortages, varying migration flows, economic recession, climate change)?			

<b>COHERENCE</b> <i>(Question to cover all Legal migration Directives, unless otherwise specified)</i>				
EQ 2: 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? EQ 3: To what extent are there inconsistencies, gaps, overlaps and synergies between the existing EU legislative framework and national legal 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?				
Evaluation question	Sub-question / research question	Judgement criteria	Indicative methodology : data collection	Indicative methodology : analysis
EQ 2: To what extent are the objectives of the legal migration Directives coherent and consistent, to what extent are there inconsistencies and overlaps? Is there any scope for simplification?	EQ 2A. (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.			
	EQ 2B: Based on a comparative legal analysis, identify if there is scope for simplification.			
EQ 3: To what extent are there inconsistencies, overlaps and synergies between the existing EU legislative framework and national legal migration legislative frameworks?	EQ 3A: (National policy coherence) Which <u>national policy choices</u> have a key role to play in the management of migration flows (including application of admission conditions, volumes of economic migrants, labour market tests, etc )			
	EQ 3B: 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 directive ("gold plating") or exist in parallel (parallel schemes)? Are there excessive burdens as a result of national implementation choices?			
EQ 4: To what extent are the Legal migration Directives coherent with other EU policies and to what extent are there inconsistencies, overlaps and synergies with such policies?	EQ 4A. (EU Policy coherence): Building upon the analysis of EQ2 which <u>other EU interventions (policies and legislation)</u> have a role in the management of migration flows? Are there synergies, gaps incoherencies, overlaps? Consider among others the policies mentioned in section C1 of the Legal Migration Fitness Check Roadmap (Annex IV).			
<b>EFFECTIVENESS</b> <i>(Questions to address Directive implemented for at least 3 years at the start of the study.)</i>				
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?				
Evaluation question	Sub-question / research question	Judgement criteria	Indicative methodology : data collection	Indicative methodology : analysis
EQ5: To what extent have the objectives of the legal migration policy been achieved?	EQ 5A: Identify the extent to which the objectives of the legal migration Directives/policy been achieved, as concerns : o Overall objectives o Objectives of the specific instruments Describe any potential gaps and inconsistencies identified.			
	EQ 5B: To what extent does the current legal migration acquis respond to the needs in this area?			
EQ 6: What have been the effects of the legal migration	EQ 6A: Identify if there were <u>any quantitative or qualitative effects</u> on migration flows (at least volumes, categories of migrants) in the control period since the introduction of the EU legal migration directives, based on the statistical analysis in descriptive question			

Directives, and to what extent can such effects be attributed to the EU intervention?	1D.			
	EQ6B: To what extent can such effects be attributed to EU legal migration directives?			
	EQ6C: To what extent can such effect be attributed to other EU policies?			
EQ 7: To what extent do the observed effects of the implementation of the Directives correspond to their objectives?	EQ 7A. Identify which effects the implementation of the respective Directives and the Member States' application of the Directives had and whether the specific objectives of each Directive are, at least concerning the following: - <u>on admission conditions and procedures</u> , whilst taking into account the Member States right to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work? - <u>fair treatment of third-country nationals</u> residing legally in Member States, focus on rights based on the permit? (Equal treatment, right to employment, entry and residence in the country, preventing exploitation) - <u>as regards intra-EU mobility</u> (for EU Blue Card holders see IA/evaluation), taking into account the objective of creating a dynamic EU wide labour market. - as regards stakeholders, impact on third-country nationals, SMEs, employers, administrations, any other relevant stakeholders, (consider at least social, economic, (environmental), fundamental rights) as well as on a macro perspective. - If no change was identified, please explain why.			
EQ 8: To what extent did different factors influence the achievement of the objectives?	EQ 8A: Identify which, if any, external factors may have influenced the changes. Identify which, if any, MS specific factors influenced the changes. If there were no changes identified, explain why.			
<b>EFFICIENCY<sup>37</sup></b> (Questions to address Directive implemented for at least 3 years at the start of the study.)	<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>			
Evaluation question	Sub-question / research question	Judgement criteria	Indicative methodology : data collection	Indicative methodology : analysis
EQ 9: Which type of costs is involved in the management of migration flows?	EQ 9A: (Based on the results of research question 3) Identify the distribution among stakeholders of significant costs and benefits related to the implementation of the legal migration directives, depending on the implementation choices made by Member States. (NB, the overall cost and benefits of migration in a macro-economic perspective is outside the scope of this Fitness Check)			
	EQ 9B: Identify what factors are driving costs and benefits and how these factors relate to the EU intervention.			
EQ 10: To what extent are there differences in how Member States implement the Directives and what are the most efficient practices?	EQ 10A: Identify for <u>each step of the migration</u> chain, if there are elements where there is scope for more efficient implementation : - Consider at least, the duration of permits, multi-step application procedures, limited access to the labour market. Also identify any other potential efficiency gains. - Consider how the implementation options provided by the Directives and as chosen by MS have influenced efficiency of their implementation			
	EQ 10B: Based on the legal migration acquis as implemented in the MS (for the three main Directives), identify: - What factors influenced the efficiency with which the way legal migration is managed by the Member State? - If there are significant differences in costs (or benefits) between Member States, what is causing them? The analysis shall focus on the admission procedure and intra-EU mobility.			

<sup>37</sup> NB, since most costs related to the application procedure (MS choices) is the product of the unit costs and the number of migrants, and the number of migrants (in most cases not controlled by the EU Legal migration acquis (economic migration, right to family reunification, gaining status of long-term resident) as well as the significant external factors that influence migration flows (conflicts, economic situation etc), a full cost benefit analysis of regulatory costs or administrative burden is not meaningful. It is therefore proposed that the effectiveness question is not focussing on an economic analysis of costs or benefits or for ranking of policies. The effectiveness analysis should therefore instead focus on specific efficiency issues in the implementation process. It should also be noted that the equal treatment provisions aim at ensuring a level playing field to avoid exploitation of third-country workers on the labour market. A typology of costs can also be developed, as can the identification of good practices.



	EQ 10C: Identify if there is potential for further streamlining of the current EU legal framework taking into account administrative burden?			
	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 implementing the Directives.			
<b>EU ADDED VALUE</b> ( <i>Questions to address Directive implemented for at least 3 years at the start of the study.</i> )	<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>			
<b>EQ 11: What has been the positive effects and results brought in by the EU legislation compared to what could have been achieved at Member State level or at international level ?</b>	EQ 11A: What would the situation have been today without the EU intervention, compared to interventions only at national level? Consider at least issues such as legal certainty, competitiveness, solidarity, coordination and any other relevant factors.			
	EQ 11B: Identify the qualitative and quantitative positive effected results brought in by EU legislation? If an expected effect has not materialised, explain why.			
<b>EQ 12: To what extent do the issues addressed by the legal migration Directives continue to require action at the EU level?</b>	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?			
	EQ 12B: What would be the consequences of withdrawing the existing EU intervention? Consider at least issues such as legal certainty, competitiveness, solidarity, coordination, and any other relevant factors.			
	EQ 12C: Are there issues currently not covered at EU level which would require EU action?			



**Annex V: Draft Legal Migration Fitness Check Roadmap**

[See separate document - [Roadmap](#).]