

FITNESS CHECK LEGAL MIGRATION

CONSULTATION STRATEGY

(version 1.2.2017)

1. Context of the Fitness Check

The Amsterdam Treaty (1999) moved migration policy from an essentially "intergovernmental" approach into the "first pillar" of European Union policy. Since then, following Member States' rejection of a horizontal approach in this field (i.e. one single Directive), a "sectorial" approach has been pursued in relation to legal migration. Consequently, a number of Directives were adopted, covering admission of third-country nationals for the purposes of work, for family reunification, study or research purposes, and regulating long term residence in the EU.

Ten years later, the Lisbon Treaty extended the qualified majority voting and conferred co-legislative powers to the European Parliament in this area. It also confirmed that, while the EU has the competence to harmonise admission conditions, procedures and rights of third-country nationals, Member States retain the possibility to control the volumes of migrants being admitted for the purpose of work.

The overarching objective of the legal migration legislation in force is to effectively manage legal migration flows, while ensuring the fair treatment of third-country nationals residing legally in Member States. Furthermore, as far as labour migration is concerned, the additional objective is to contribute to foster competitiveness and growth in the EU, in particular by helping to fill gaps and shortages within the EU labour market.

2. Objectives and scope of the Fitness Check - Role of the consultations

The Fitness check on legal migration was announced first in the 2013 REFIT Communication, later confirmed by the 2015 "European Agenda on Migration" and the 2016 Communication "Towards a reform of the common asylum system and enhancing legal avenues to Europe". Its aim is to evaluate the existing EU legislation on legal migration; try to identify any possible gaps and inconsistencies; and analyse if it contributes to an effective management of migration flows. Legal migration should be understood mainly for stays of more than three months in the EU.

More specifically, the Fitness Check will evaluate the relevance, coherence, effectiveness, efficiency and EU added value of the legal migration Directives. It will also assess how the relevant Directives are actually applied in each Member State

The scope of the evaluation covers all existing legal migration Directives, while the nature and depth of the assessment differs depending on the period during which each legal instrument has been implemented. The relevant Directives are:

Directive 2003/86/EC on family reunification
Directive 2003/109/EC on long-term residents
Directives 2004/114/EC on Students and 2005/71/EC on researchers, later recast as Directive EU 2016/801(entry into effect 2018)

Directive 2009/50/EC on highly skilled employment (EU Blue Card)

Directive 2011/98/EU on a single application procedure for a single permit and equal treatment of third country workers

Directive 2014/36/EU on Seasonal workers

Directive 2014/66/EU on intra-corporate transfers

Furthermore, the results of the Fitness check may be used to evaluate whether there is a need for specific EU rules for other categories currently not covered and whether the EU legal migration legislation is attuned to the economic and social needs of the EU, also in the light of the need to prevent and combat labour exploitation.

The public and targeted consultations will be a fundamental source of input to the Fitness Check. The consultations will focus on the criteria listed above and will consider the following aspects related to the migration management system, namely:

- a) Admission conditions and procedures;
- b) Rights (equal treatment and rights based on the permit);
- c) Access to the labour market;
- d) Intra-EU mobility;
- e) Information (transparency);
- f) End of stay, absence from the EU and departure.

3. The Fitness Check Webpage: Central news site and document repository

The [Roadmap](#) - which includes more details on the approach chosen for the Fitness Check, including the proposed Evaluation Questions - is available on the Commission's Better Regulation Webpage.

The dedicated Fitness Check webpage, reachable from the Legal Migration pages of DG HOME¹, will be kept updated, notably in what regards: the timeline of the process; the publication of the relevant interim documents; the results of the consultations.

In addition, once the public consultation is launched, this page will provide the link to the entry point to the consultations².

4. Open public consultation

The 12-week Internet-based open public consultation, planned for the 2nd trimester of 2017, will use the Commission's web "EU Survey" tool and will gather evidence and views for the Fitness Check. It will be advertised through the "[Your Voice in Europe](#)" portal and will be published on [DG HOME's website](#).

¹ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/legal-migration/index_en.htm

² http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2016/consulting_0039_en.htm

The questions asked will be based on the evaluation questions, and seek to identify evidence, experiences, data and opinions that enables a meaningful quantitative and qualitative assessment of relevance, coherence, effectiveness, efficiency and EU added value of the current EU legislative framework. For this, the consultation will be organised to cover the different phases of the migration process, namely: pre-application; preparation; application; entry and travel; post-application; residency; intra-EU mobility and end of legal stay.

Considering the elements above, the European Commission considered that the consultation should target the following stakeholders: (1) national authorities in the Member States (national Ministries and government agencies; regional and local authorities; consulates, embassies and diplomatic missions in third countries); (2) employment-related organisations and social partners (employers, trade unions; employment matching organisations and recruitment organisations; entrepreneurs; labours inspectorates); (3) organisations representing students and researchers; (4) international organisations with interest in migration; (5) organisations in the countries of origin; (6) third country nationals (residing in the EU and outside the EU); (7) NGOs and civil society organisations; (8) MEPs; (9) Academia; (10) migration-related agencies; (11) wider public.

The questionnaire will be made available in the EU official languages.

The European Commission will pro-actively promote the public consultation process, aiming at achieving a balanced set of views (e.g. migrants, public authorities and economic and social partners). This will involve: a press release announcing the launch of the public consultation; messaging on social media; and targeted announcements to concerned networks.

5. Targeted consultations

5.1 Format and focus of targeted consultations

The purpose of the targeted consultations is, in the first instance, to gather evidence for the evaluation process (Q1/2017 to Q3/2017). Towards the end of 2017, more limited targeted consultations may be organised for the validation of results (Q4/2017).

For evidence gathering, targeted outreach will be carried out through a multitude of existing networks, expert groups and forums at the European, but also national level. Proposed actions are:

- Specific dedicated meetings with target groups, based on discussion papers/questionnaires;
- Specific sessions on the Fitness check in meetings with relevant authorities and agencies of the Member States, as well as with stakeholders;
- Specifically organised hearings with EU institutions/bodies and NGO networks;
- Targeted questionnaires, interviews and/or online surveys to interested parties;
- Bilateral meetings with interested parties.

The targeted consultations will include questions that seek both qualitative and quantitative answers. References to further studies and data that provide evidence, experiences, data and opinions on Relevance, Coherence, Effectiveness, Efficiency and EU added value may also be sought.

Some activities will be organised by the Commission (DG [HOME, Unit B.1.](#), Legal migration and integration), with others being arranged by the consultants that is carrying out a study supporting the Fitness Check. In addition to providing background research on the different aspects of the evaluation questions, the study will include an investigation into the practical application of the legal migration Directives, supporting the Commission's role in monitoring and enforcing the Directives.

The summaries of the outcomes of such activities will be made available on the dedicated Legal Migration Webpage.

5.2 Key interested parties to be actively involved

For targeted consultations, existing networks and platforms and planned upcoming events will be used as far as possible. Some examples:

Contact with EU institutions:

- European Parliament: ad hoc meeting with the relevant Committee and Members of Parliament; possible consultation with representatives of the national Parliaments;
- European Economic and Social Committee cooperation to develop an opinion on the Fitness check (public hearing and field visits).

Contacts with EU Member States:

In addition to the contacts through the institutions and by the contractors, the following *fora* are to be used (*non-exhaustive list*):

- **Contact Group on Legal Migration (CGLM):** In-depth discussion planned for May 2017; progress will be presented to the group in the regular meetings.
- **European Migration Network:** Existing EMN studies and ad-hoc queries are key input documents for the Fitness Check. If the need for new ad-hoc queries arises, such queries could be launched for fact finding that underpins the evaluation (e.g. updates of certain aspects of earlier studies or new statistics). EMN could also be consulted more specifically on the evaluation questions.

Civil society:

The annual meeting of the **European Migration Forum (2nd and 3rd March 2017)**, gathering civil society representatives selected after a public call for participation, will have a session/workshop dedicated to the Fitness check.

Networks of NGOs working at the EU level will be consulted through targeted questionnaires as well as through possible dedicated meetings (such as Social Platform³, Concorde⁴, Human Rights and Democracy Network⁵, Caritas, PICUM, etc.).

Social partners, trade unions and employers' associations, at EU and national level, as well as associations representing students and researchers, will be contacted by the contractor through targeted questionnaires as well as through possible dedicated meetings.

Contact with representatives of specific interests (Member States and other stakeholders) linked to other EU policies (focus on "coherence"):

For the evaluation of the coherence criterion, a number of other EU policies have been listed, and consultation of expert groups linked to other DGs or other DG HOME work should be a main point of contact for sectorial consultation. Such groups usually gather Member States and, in some cases, other stakeholders. Such targeted consultations should take place in the later phase of the evidence gathering consultation phase when information gaps have been better identified.

³ <http://www.socialplatform.org>

⁴ <https://concordeurope.org>

⁵ <http://www.hrdn.eu>

Contact with specific expert groups, high level groups and think tanks:

- **Expert Group on Economic Migration (DG HOME):**

This expert group has been appointed for the purpose of the Blue Card review, gathering employers and trade unions, migrants' interests, business, and academics. It is proposed to consult it for both fact finding and validation purposes.

- **Platform of Undeclared work (DG EMPL):**

This platform was launched on 27 May 2016 to enhance cooperation in tackling undeclared work. It gathers representatives of labour inspectorates, tax and customs authorities, social security authorities, trade unions, employers' organisations, ministries, and other relevant organisations like Eurofound, EU-OSHA and the ILO. The platform meets at least twice a year and specific working groups are established to deal with different aspects of undeclared work.

- **Centre for European Policy Studies (CEPS):**

A meeting (by invitation) focussing on the external dimension of EU legal migration policy and its interaction with the current legal framework took place on 27 January 2017, in the framework of EURANET (Transnational Migration in Transition), financed by the European Commission (DG RTD).

Contact with international organisations:

The literature review to be carried out by the consultant may identify key issues to be raised on a bilateral basis with certain organisations. If so, ad hoc meetings can be organised with e.g. the OECD, IOM.

5.3. Outreach to third-country nationals:

One key stakeholder group in this fitness check is third country nationals who have migrated to the EU or those who are potential migrants. Although some civil society organisations represent their interests, the group is by nature diverse and not necessarily represented by organised interest groups. To capture this group's views different approaches are needed. Ensuring representative and statistically significant views from this group will be challenging, but best efforts need to be made.

Planned consultation activities aimed at this group are planned to take place during the:

- public consultation (specific questions will be included);
- targeted consultation (targeted online surveys)
- as part of the practical application study;
- targeted consultation of organisations representing migrants.