Background paper and questionnaire:
preparation of the Hearing of civil society
23 June 2017 (Brussels)

***Organised by the European Commission
in partnership with the Social Platform***

### Part 1: Introduction/Objectives:

***1. The objectives of the Hearing with civil society representatives on the legal migration legislation (in partnership with the Social Platform):***

The European Commission is currently evaluating its legislation on legal migration (of non-EU citizens to the EU – *details in point 2*). In this framework, it is conducting a consultation of interested parties. The objective of the consultation is to on one hand gather opinions and feedback on the existing legal framework, focusing on its relevance, coherence with the other EU legislation, effectiveness and efficiency in reaching its objectives and continued EU added-value, and on the other hand gather information on practical experience of how the Directives are being implemented.

A key aspect of this process is the public consultation that will be launched on-line in mid-June, until mid-September. Complementary targeted consultations are being developed with different stakeholders: social partners, public authorities in the Member States and, with special importance, organisations representing the civil society, including those representing the interests of non-EU citizens in the EU.

The **hearing of the representatives of civil society**, which will take place on **23 June** in Brussels, intends to give the possibility to the latter organisations to express their views and contribute with their experiences more in detail. It complements the information that is being gathered in other ways, such as the public consultation and the debated in the framework of the European Migration Forum (which took place in March 2017).

**The current document aims at** **preparing this hearing**: the questions included in the second part can be used to gather and organise the relevant information, linking it to the evaluation aspects that frame the evaluation work (relevance, coherence, effectiveness/efficiency, EU added-value). Further actions of consultation may be envisaged.

The civil society representatives can provide a perspective based on their practical experience of working with non-EU citizens about the reality/application of EU legislation at national level. This does not entail a need to answer all the questions, nor to collect information that Member States authorities can provide. The main objective is to focus on the experience civil society organisations can relay relating to specific relevant issues and to share this information.

The results of the consultations will be essential for both the factual report on the implementation of the legislation in EU countries and for the evaluation report of the Commission on the legislation, including determining if there are gaps and inconsistencies of the EU legal migration legislation and room for simplification. This evaluation may be the basis for developing a more comprehensive policy that contributes to an effective management of flows of migration of non-EU citizens, promotes equal treatment and fights exploitation.

***2. The evaluation process/Fitness Check[[1]](#footnote-2):***

The Fitness check on legal migration aims at **evaluating the existing EU legislation on legal migration**; trying to identify any possible gaps and inconsistencies; and analysing 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. Please note that the UK, Ireland and Denmark do not apply this legislation, and are therefore not covered by the evaluation.

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 current, and future, economic and social needs of the EU, also in the light of the need to prevent and combat labour exploitation.

***3. The origins and objectives of the EU legal migration legislation:***

When the EU acquired competence to legislate in the area of legal migration the Tampere European Council (October 1999) concluded on the following main objectives on which the EU legal migration Directives were to be based:

* Fair treatment of non-EU citizens who reside legally on the territory of its Member States.
* Approximation of national legislations on the conditions for admission, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin.
* Consideration not only to the reception capacity of each Member State, but also their historical and cultural links with the countries of origin.
* Granting, depending on the length of stay, a set of uniform rights which are as near as possible to those enjoyed by EU citizens;
* Consider a pathway to obtain the nationality of the Member State in which they are resident.

The Treaty on the Functioning of the EU as amended by the Lisbon Treaty (in effect in 2011 specifies the following principles set out in its article 79:

* *The Union shall develop a common immigration policy aimed at ensuring, at all stages, the* ***efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States****, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.*
* *The ordinary legislative procedure (both Council and the European Parliament) applies for the adoption of measures (such as Directives) in relation to :*

*(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;*

*(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;*

*(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;*

*(d) combating trafficking in persons, in particular women and children*

* *Member States control the volumes of migrants admitted for the purpose of work*
* *The Council and the European Parliament (via the ordinary legislative procedure) establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.*

Following the adoption of Directives on Long term resident status and Family reunification in 2003, and on Students and Researchers in 2004, a proposal for a horizontal approach to labour migration was withdrawn by the Commission as it didn't receive support from the Member States.

Since then a "sectorial" approach has been pursued in relation to legal migration for the purpose of work and a number of Directives were adopted, covering admission of non-EU citizens for the purposes of highly skilled work, seasonal work, intra-corporate transfers as well as other forms of work (volunteers, trainees, au-pairs, within the Directive Students and Researchers).

The **objectives** of the legal migration Directives that have been adopted, based on the historical developments above, can be summarised as follows:

* Promotion of an **effective management of migration flows** in the EU, notably via a greater harmonisation in the admission conditions and procedures applied by MS towards non-EU citizens;
* Guarantee of **fair treatment of third-country citizens**, ensuring greater comparability between the rights of non-EU citizens and EU citizens and contributing to their integration and to the fight against exploitation;
* Contribution to the **competitiveness and growth** of the EU, notably addressing skills shortages in key sectors of the EU economy by attracting and retaining non-EU citizens with the requisite skills and labour market mismatches by strengthening intra-EU mobility rights of non-EU citizens.

**Part 2: Questions for the preparation of the workshop, based on civil society representatives' experiences and opinions:**

*1.1. In what regards the RELEVANCE**of the legal migration legislation:*

1. **Do you think that the objectives of the legal migration Directives are still relevant?** In particular as regards:
* establishing an **effective management of migration flows** in the EU, enhancing **legal and safe pathways to the EU** and stemming disorderly irregular migration to the EU;
* guaranteeing **fair treatment of third-country citizens**, contributing to their integration and to the fight against exploitation;
1. What new **societal challenges** (demographic, economic…) and **new needs** in the EU do you think will impact the migration flows to the EU now and in the future?
2. How would you envisage the **future developments of the EU legislation** to better adapt it to these new challenges and needs?

### *1.2. In what regards the COHERENCE of the legal migration legislation: possible inconsistencies, gaps and overlaps between the Directives, as well as in relation to national law and the other EU policies:*

1. Do you consider that the there are aspects of the legal migration Directives that could be **streamlined and simplified**? You may refer to experience of one particular Directive or several, and include information on how they are being implemented at the national level.
2. From your perspective, what are **the most relevant gaps as regards categories of third-country nationals that are currently not fully covered by the EU legislation**? For example do you have some views as regards the following categories of migrants that are not fully covered by the legislation? Do you consider that there are other relevant categories that should be considered?
* (Admission conditions for[[2]](#footnote-3)) medium and low-skilled workers other than seasonal workers (e.g. domestic workers, construction, the hotel/restaurant/café sector, …)
* Self-employed workers,
* Investors, Entrepreneurs and Start-ups
* Non-removable irregular migrants
* Third-country family members of non-mobile EU citizens
* Jobseekers and Working holiday schemes
1. From your perspective, what are **the most relevant gaps in what regards admission conditions, procedures and safeguards, rights of non-EU citizens**, or other issues that are currently not covered by the EU legislation?

### *1.3. In what regards the EFFECTIVENESS and EFFICIENCY of the legal migration legislation:*

You may refer to experience of one particular Directive or several, and include information on how they are being implemented at the national level.

1. Do you think that the **objectives of the Directives have been met**?
2. If this has not been the case, in your view what were the reasons and, in special, were there **external factors that have negatively influenced the achievement of objectives of the Directive**? If yes, provide examples.
3. In your view, how are the **main costs and benefits** related to the implementation of the legal migration directives distributed? (ie, are these costs/benefits more concentrated on the non-EU citizens? On the EU authorities? Other?)
4. Are you aware of good practices in terms of efficient management of migration? In your view, for each step of the migration chain, are there **elements where there is scope for more efficient implementation**?

*To reflect on the possible gains in efficiency of the legal migration legislation, please consider:*

* **Pre-application phase**: e.g. fragmented approach to provision of information on legal migration possibilities; criteria to be met and administrative barriers (fees, language/ integration tests and their accessibility, etc). .
* **Application phase**: e.g. absence of standardised application forms; multi-step application procedures; lengthy procedures for legal remedies; criteria to be met and administrative barriers (fees, language/ integration tests and their accessibility, etc) .
* **Entry and travel phase**: e.g. administrative requirements for TCNs to travel even in the event of holding valid permit.
* **Post application phase**: e.g. lengthy waiting periods to receive permits, inefficient division of competences at MS level for submitting/delivering/renewing permits.
* **Residency phase**: e.g. costs of permits (sticker vs stand-alone document), short duration of permits, complexity of renewal procedures (type of evidence needed, etc.), restrictions on labour rights (e.g. access labour market; application of labour standards); , rights of dependents, monitoring and complaints mechanisms; redress for violations; obstacles to status change.
* **Intra-EU mobility phase**: e.g. legal and practical obstacles to intra-EU mobility create missed opportunities for legal migrants to addresses mismatches in EU labour market and can result in them falling into irregularity.
* **End of stay phase**: e.g. support to non-EU citizens wishing to return to a third country (e.g. information about how / whether certain acquired rights can be ‘exported’; exportability of such rights; timeline for ‘tolerated’ absences from the Member State without loss of residence permit/rights; procedures and conditions in place for circular migration)
* *Other*?

### *1.4. In what regards the EU ADDED VALUE:*

1. In your view, what have been the **positive effects and results brought in by the EU legislation** compared to what could have been achieved at national level? Please consider in particular the Directives regulating EU long term residence, family reunification and the single permit. If possible, provide examples to support your answer.
1. <http://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en> [↑](#footnote-ref-2)
2. Please note the Single Permit covers admission procedures and safeguards, as well as equal treatment for most such categories of third-country nationals that are employed. [↑](#footnote-ref-3)