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NOTE

From:	Presidency
To:	Working Party on Integration, Migration and Expulsion (Admission)
Subject:	The future of legal migration in the EU: state of play and possible way forward - Presidency discussion paper

Background

The Convention implementing the Schengen Agreement entered into force on 26 March 1995. Due to the ensuing abolition of internal border controls there also emerged a need to develop "common policies on asylum and immigration" that, with regard to legal migration, "ensure fair treatment of third country nationals who reside legally on the territory of [the] Member States" of the European Union and "aim at granting them rights and obligations comparable to those of EU citizens"¹. The European Council acknowledged the "need for approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin"².

¹ Presidency Conclusions at the Tampere European Council on 15/16 October 1999, points 3 and 18.

² Presidency Conclusions at the Tampere European Council on 15/16 October 1999, point 20.

Today the EU acquis on legal migration is laid down in several ‘sectoral’ Directives covering different categories of third-country nationals and regulating different stages of the migration process:

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents;
- 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);
- 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;
- 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;
- 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; and

- 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 purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (building upon the former 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 and the Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research).

Recent Developments

The EU acquis evolved in particular in recent years when the former Directive 2004/114/EC and the Directive 2005/71/EC were revised and merged into the new Students & Researchers Directive in 2016³. Also in 2016, the Commission tabled a proposal for the revision of the Blue Card Directive, which has been in force since 2009. However, the trilogue negotiations, which started in 2017, could not yet be concluded but will be given a fresh start, not least thanks to the Commission's statements regarding the Blue Card in its Migration Pact⁴.

³ 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 purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (COM(2020) 609 final), 23 September 2020, page 25.

In regard to further developments, the Commission first published its Fitness Check on EU legislation on legal migration⁵ in 2019. The focus of the evaluation was to "assess the existing EU legislation on legal migration in the light of current and future challenges, with a view to identifying issues, gaps and inconsistencies, and to outlining, where appropriate, ways of simplifying and streamlining the current EU framework in order to improve the management of legal migration flows"⁶. The Commission came to the conclusion that "the legal migration Directives evaluated in this fitness check may be considered largely 'fit for purpose'" but that the current legal migration framework on the other hand "had a limited impact vis-à-vis the overall migration challenges that Europe is facing, and the fitness check has identified a number of critical issues in this respect." The Commission proposed a number of measures that in its view "will need to be addressed in the future" "if the EU wants fully to achieve the Treaty objective of developing a common legal migration policy as a key element of a comprehensive policy on management of migratory flows" including "considering putting forward legislative measures to tackle the inconsistencies, gaps and other shortcomings identified, so as to simplify, streamline, complete and generally improve EU legislation."⁷

Member States discussed the main findings of the Fitness Check in the meeting of the Contact Group on Legal Migration on 20 May 2019 as well as in SCIFA on 29 May 2019. In these discussions, a vast majority of Member States supported a better implementation of the existing instruments and the establishment of greater coherence between the existing directives but saw only limited or no need for new legislative acts to cover other branches or areas of legal migration.

⁵ Commission Staff Working Document Fitness Check on EU Legislation on legal migration (SWD(2019) 1055 final, 29 March 2019.

⁶ Commission Staff Working Document Fitness Check on EU Legislation on legal migration (SWD(2019) 1055 final, 29 March 2019, page 4.

⁷ Commission Staff Working Document Fitness Check on EU Legislation on legal migration (SWD(2019) 1055 final, 29 March 2019, page 105.

Possible way forward

When talking about migration, the focus often lies on illegal migration and asylum. However, asylum is only one part of the picture. The Presidency considers that legal migration also is an important element for the continent's and our economies further development as well as for controlling and managing migration flows.

The discussion has already started:

The Commission in its Migration Pact recently announced a "Skills and Talent Package"⁸ including a revision of the Directive on long-term residents⁹ and a review of the Single Permit Directive¹⁰. In addition and with a view to identify "additional areas where the EU framework could be improved, including through possible new legislation" the Commission on 23 September 2020 launched a "public consultation on attracting skills and talents" inviting stakeholders (such as national, regional and local authorities, civil society organisations, social and economic partners, businesses, academia, migrant organisations and also private individuals) to give their input¹¹.

The European Parliament is working on an Own Initiative Report on "New Avenues for Legal Labour Migration" (2020/2010(INI)).

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (COM(2020) 609 final), 23 September 2020, page 26.

⁹ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

¹⁰ 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.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (COM(2020) 609 final), 23 September 2020, page 26.

In view of the Presidency, the Council should contribute to the discussion on further developing the EU legal framework regarding legal migration. Drawing on the debate in the above-mentioned meeting of the Contact Group on Legal Migration of 20 May 2019 a main issue that should be part of the discussion is the question of better implementing the existing instruments and establishing greater coherence between existing directives. The topic that is likely to become controversial in the overall discussion however is whether or not (and to what extent) there is a need for further legislative acts extending the EU acquis. In the said meeting, Member States already looked at possible extensions to the acquis covering one or more additional categories of third-country nationals (e.g. self-employed and entrepreneurs, jobseekers).

The Presidency therefore suggests launching a broader debate in the Council on the objectives and the future of the EU's legal migration policy with the aim of providing input for the Commission's assessment and determining where the EU framework could be further improved.

Do Member States agree with this approach?

Since a majority of Member States in the above-mentioned meeting of the Contact Group on Legal Migration of 20 May 2019 were in favour of a better implementation and establishment of greater coherence between the existing instruments the Presidency suggests to start the discussion by looking into these questions in more detail. In particular, the question of Intra EU Mobility seems worth examining more closely since this is an important part of the added value that EU legislation has to offer.

Do Member States agree with starting the discussion by looking more closely into the questions of better implementation and establishment of greater coherence? In addition to Intra EU Mobility, for what other areas do Member States see a need for a thorough examination?

As we understand it, there are strong voices in the European Parliament asking particularly for EU legislation for low and medium skilled workers. Also the Commission announced in its Migration Pact of 23 September 2020 to "look at ways to simplify and clarify the scope of the legislation, including admission and residence conditions for low and medium skilled workers" with the review of the Single Permit Directive¹². However, in the above-mentioned meeting of the Contact Group on Legal Migration of 20 May 2019 the Commission put other categories of third-country nationals up for discussion as well, such as self-employed and entrepreneurs, jobseekers or highly mobile workers.

Considering this already ongoing discussion, do Member States agree that it would be useful also for the Council to reflect on and give input to the question whether or not (and if, to what extent) there is a need for new areas of EU legislation on legal migration? If you see such need, what are the categories of third country nationals that should be discussed in regard to possible extensions of the EU legal framework?

In the above-mentioned meeting of the Contact Group on Legal Migration of 20 May 2019, there has also been an exchange on interaction and complementarity with other policies.

Do Member States see a need for a further discussion also on these issues and, if this is the case, what would be the policies that the Council should look at in particular?

Since the discussion in the Council is only starting, what other topics in relation to the development of the EU legal framework regarding legal migration should be discussed?

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (COM(2020) 609 final), 23 September 2020, page 26.