## Expert meeting

### *Enhancing the OSCE long-term approach to migration governance:*

### *the OCEEA contribution*

Vienna, 17 June 2016

## KEY FINDINGS

On 17 June 2016 in Vienna, the OSCE/OCEEA organised the Expert Meeting "*Towards an enhanced long-term OSCE approach to migration governance*". The event brought together over 80 participants from international and regional organizations – the International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations' Department of Economic and Social Affairs (UNDESA), the International Centre for Migration Policy Development (ICMPD) the World Economic Forum (WEF), the International Trade Union Confederation (ITUC) – as well as OSCE executive structures and institutions, national and international specialists in the field of migration governance, academia and civil society. Based on a *Food-for-Thought* paper developed by the Office, the meeting discussed the following issues:

1. The OCEEA's mandate and achievements in the field of labour migration governance, including the role of Field Operations;
2. Emerging challenges and areas for policy guidance;
3. Tools and priority areas for future action for the OSCE/OCEEA economic dimension to the global frameworks of migration governance.

The following *key findings*, distilled from the expert discussion, are offered as a tool for reflection to the Chairmanship and the participating States (pS) in view of the Special Permanent Council on Migration and Refugee flows on 20 July 2016. This document and the related *Food-for-thought* paper provided relevant background for the **review of the commitments in the framework of the 24th Economic and Environmental Forum, EEF.GAL/15/16, 7 September 2016**.

This document contains the following headlines:

## 1. BACKGROUND

The international movement of people has been an area of focus for the OSCE since its establishment. The OSCE commitments refer to migration governance in a comprehensive way.[i]

By depicting migration as a relevant contributing factor to economic stability and security in the OSCE region, the commitments contained in the Helsinki Final Act paved the way to further decisions that shape the current mandate of the OSCE in the second dimension, elaborating on economic and social aspects of migration: the Ljubljana Ministerial Council Decision no. 02/05 on *Migration*, and the Athens Ministerial Council Decision no. 05/09 on *Migration management*.[ii] These OSCE commitments emphasize addressing legal and orderly migration, protection of migrants' personal and social welfare, attention to recruitment practices, provision of vocational training as well as equality of rights between migrant workers and nationals regarding conditions of employment and social security.

The size, composition, and direction of migration flows within, from and into the OSCE area have been magnified, diversified and accelerated by globalization. Legal and 'illegal'[iii] migration patterns tend to influence each other, impacting on security, economic growth and social cohesion. Similarly, the international, regional and States' responses have evolved considerably. Aware of the economic and social potential of migration, regional agreements on economic integration have fostered intra-regional mobility of people, specifically within the thirteen Regional Economic Communities (RECs) involving more than 100 countries that have established or are negotiating formal regimes of free circulation of persons (including the EU and the Eurasian Economic Union-EAEU).

Yet, despite demographic shifts and evidence-based needs of labour markets and private sector, inter-regional and transnational migration has been met with growing wariness and sometimes outright resistance, supported by increasingly opposing public opinions. The emergence of new barriers to migration risks regression to limitations on movement reminiscent of pre and post second-world war eras. The spectre of an "invasion" of poor and 'different' migrants has been increasingly – and dangerously – raised not only by manifestly xenophobic parties.[iv] Despite the reality of evidence predominantly to the contrary, even more "mainstream" positions assert that alleged costs of receiving and integrating refugees/migrants generally outweigh the benefits for economies and social development.[v] The association of terrorism with migration has exacerbated *securitizing* the debate, despite the fact that most acts to date attributed to terrorists were executed by native born citizens, albeit originating in marginalized communities with immigrant backgrounds.

States' responses towards progressively more restrictive national migration policies have often produced counter-productive effects in a world globalized economy where goods and financial assets move increasingly along safe and rapid channels: restrictive migration policies limit circularity and return; exacerbate a parallel market of unlawful intermediaries that facilitate the movement and job placement of individuals outside the safeguards of the law; foster exploitative practices of legal and 'illegal' migrant workers and consequent social dumping effects[vi] that are detrimental for the labour market transparency and the fair competition in the national economy, undermining social cohesion and fuelling turf battles among social groups - national and migrant workers, women and men workers - that feel discriminated against for different reasons.

Despite international policy frameworks have evolved considerably to guide States in elaborating their own national policy, the multilateral response is still fragmented. The complexity of the issue is mirrored in the discussions – and related recognition of rights - around 'voluntary' – economic-driven – migrants and 'involuntary' – conflict and persecution-induced – migrants, these latter defined in the 1951 Refugee Convention[vii]. Indeed, States retain their sovereign prerogative to decide on admission, conditions of stay

and expulsion of non-nationals – both in case of 'voluntary' and 'involuntary' migratory movements, as well as in case of legal and 'illegal' migration flows.

The lack of agreed definitions - in international or in some cases national law - of migration-related issues, like migration, integration, diaspora, settlement, family/family reunification, confirms the need for a systematic, inclusive, evidence-based and politically-sensitive dialogue on migration at different levels, international, regional and local, involving a wide array of stakeholders, national and local authorities, trade unions, the private sector, hosting and sending communities and the migrants themselves.


## 2. OVERALL CHALLENGES AND AREAS FOR ENHANCED CO-OPERATION

Considering its consolidated mandate in the economic dimension – focused on fostering and supporting legal migration – and based on the Office's *Food-for-Though* paper and the discussions at the Expert meeting, the following overall challenges for migration governance across the OSCE region include:

**2.1. Migration legislation and policy in many countries is still inadequate to effectively govern migration and its labour, economic and social dimensions, including migrants' social and labour inclusion**

- There is a strong need to overcome *ad hoc* and emergency approaches and promote evidence- and standards-based migration governance policies addressing key economic and social benefits of migration;

- Key aspects of labour laws and regulations as well as migration polices need more accurate and comprehensive analysis as well as harmonisation in order to avoid perpetuation of abusive and exploitative working conditions and employment relations for many migrants, both legal and 'illegal', both migrant workers as well as refugees;

- In achieving effective governance of migration – including migrants' labour and social inclusion - a participatory and bottom-up approach is essential in discussing migration-related challenges in order to identify shared and tailored responses

- There is a need to enhance understanding of emerging migration trends, particularly of youth, considering that individuals aged 16-28 are prevalent in today's migrants' stock

- Significant gaps in understanding, competencies and capacities at different levels of governments and civil society need to be bridged in order to pursue enhanced effectiveness in managing all the different stages of the migration process: recruitment, job placement, integration, return or re-emigration

- A closer attention should be paid to circular migration schemes and avoid counter-productive effects related to brain waste and de-skilling effects of migration

- There is a need to identify ways to increase the capacity of States' reception systems to address unregulated flows of people whose legal status – refugee, asylum seeker, economic migrant, victim of trafficking etc. – is still undetermined. The aim is to avoid that individuals remain in a limbo situation for long periods, which undermines the States' interest for security and control of the territory, and the individuals' interest to enjoy durable solutions in the country of first reception, destination, origin or in a third country.

**2.2. The need for maintaining an inclusive, politically-sensitive and response-oriented dialogue on migration and mobility within and among regional integration processes concerning OSCE participating States**

- The main obstacle to good migration governance is securitizing the overall discussion. The OSCE's comprehensive concept of security can provide useful guidance in leading a politically-sensitive dialogue among the pS and with other international and regional actors in this field

- There is a need to avoid that sub-regional agreements on migration regimes turn into dividing lines in the OSCE region. A systematic and inclusive dialogue on migration is needed to bridge political visions and gaps

- Emerging relevant actors should be included in migration-related dialogue forums, like the private sector, trade unions, education/training institutions, migrants' associations, local authorities, hosting communities.

**2.3. Predominance of hostile narratives on migration that preclude developing effective migration policies as crucial to development and economic vitality while curbing exclusion and social polarization**

- The way migration is depicted bears political responsibilities. Widespread proliferation of public misperceptions, hostile political discourse and anti-migrant manifestations across the OSCE region discourages political will and public support for appropriate and safe legal migration regimes

- Evident confusion between migration generally and the specificity of refugees and the refugee concept has been propagated in the coverage and discourse on the surge of refugee arrivals to certain countries

- Media should be involved in promoting appropriate use of language when dealing with migration-related matters and adhere to deontological codes of conducts in this field (i.e. the Chart of Rome)

- There is the need to better understand the fears of hosting and migrant communities through innovative and ad *hoc* analysis in order to overcome the 'us-them' divide

## 3.  PRIORITY AREAS FOR FUTURE ACTION OF THE OSCE/OCEEA

In line with the above challenges, the OSCE/OCEEA has identified the following priority areas for the Office multiannual planning of activities:

**3.1. Continuing support to comprehensive migration policies** implementing the broad agenda of migration governance set out in the OSCE commitments. In the framework of this priority area, the Office will pay a special attention to *inter alia*:

*3.1.1. Empowerment and participation of migrant workers* - with a special attention to women - to facilitate integration in labour markets, employment and self-employment/entrepreneurship. There is a strong need to enable the economic and legal environment so that migrants and refugees can express their potentialities for the benefit of countries of destination and origin. Keeping the labour environment free from exploitation practices is a substantial measure to preserve transparency and competitiveness of local economies and protect the labour rights of all workers, national and migrant, men and women;

*3.1.2 Migration and youth*, to make migration an empowering and educational experience so that the new generation can adapt effectively to a rapidly changing economic world;

*3.1.3 Fostering circularity of migration***:** the Office intends to explore ways for effective circularity of migration. In this area, return and re-emigration are notably challenging phases.

**3.2. Supporting effective engagement of local authorities** in addressing migration management, integration and related concerns by facilitating '*Glocal*' (Global-local) cooperation, bringing to bear global knowledge and good practices on challenges faced most immediately by local authorities;

*3.2.1. Exploring the 'resilience' of local communities* to the arrival and presence of

migrants in order to improve local responses, including in case of sharp increase in unregulated migration flows.

Aware of the specificities of different sub-regions in the OSCE area, the Office will pursue a needs-based approach keeping in due consideration the peculiar aspects of migration trends and policies in each sub-region.

**3.3.** **Changing the narrative of migration** from threat to opportunity, from burden to resource, from exclusion to inclusiveness. Obtaining effective migration governance as well as public support and maintaining social cohesion require an informed, evidence-based approach, bridging gaps between perception and reality.

The proposed priority topics and operational areas for enhanced activity are in line with the current role and mandate of OSCE/OCEEA, in the second dimension. While properly placed as an integral component of the Economic Governance Unit, the Office role in migration governance would benefit from being more easily recognizable to external and expert partners and communities. What form or identity this could take, will be a subject for further internal consideration and external consultation.

## 4.   OSCE/OCEEA ROLE AND ACTIVITY PILLARS

**4.1**   *Facilitating dialogue and co-operation,* remains inherent and vital to the OSCE role and activity on migration. The OSCE/OCEEA in its mandate areas will build on its success in dialogue and cooperation on migration, towards fuller inclusion of issues covered and stakeholders. To this end, the Office will continue organizing specialized gatherings, meetings, seminars, workshops, conferences;

**4.2**   *Building the knowledge base for effective policy and implementation.* All of the above priorities require dedicated research and knowledge building. The Office will pay specific attention to policy-oriented research and will strive for sound and innovative methodologies pursuing a participatory approach;

**4.3**   *Producing practical guidance and conducting capacity-building.* This area of OSCE/OCEEA excellence remains crucial to supporting participating States, and is essential to address the topic concerns;

**4.4**   *Supporting formulation and implementation of policies and initiatives in line with the OSCE commitments.* This area will be reinforced through more focused actions --such as country advisory support visits—to promote tailored policy-making and institutional capacity-building. OSCE/OCEEA could further assist participating countries with expert assessments on needs, determining responses and measuring progress to enhance implementation of commitments, including voluntary reporting.

## 5.   THE ROLE OF FIELD OPERATIONS

A particular OSCE comparative advantage is its field presence. There is an ongoing discussion on the role of FOs in the short-term and emergencies migration-related responses Yet, the OSCE long-term efforts to support improved migration governance could usefully rely to a greater degree of involvement of Field Operations vis-à-vis participating States, including as well local authorities. Field Operations would be particularly relevant in assessing needs, exchanging experiences, piloting and solidifying positive practices, enhancing the dialogue among concerned countries and facilitating co-operation with other actors in the field. Indeed, migration governance and management models and practices need to be adapted to the specific features of local contexts.

The following challenges to foster a role of FOs in the area of migration governance can be identified:

**5.1** **Planning and co-ordination**: joint planning of activities, communication and coordination between FOs and OSCE Executive Structures addressing migration-related concerns can be streamlined in order to be more effective. Guiding documents could be also developed in order to foster coherence and consistency in approaching migration governance at the level of the Secretariat and at field level.

**5.2** **Improving responsiveness**: in order to improve responsiveness in the field of migration governance at filed level, where relevant, determine approaches to enhance the capacity and competences of FOs, including by training, assigning staff with specialized competences, and/or providing 'back-up' support from OSCE/OCEEA and/or external experts, through - for example - projects or short-term assignments, including exploring ways to exchange/second personnel with other international/regional organizations.

## 6.    RESOURCES

The discussion among relevant experts on 17 June 2016, distilled in these key findings, show the current potentialities for an enhanced role of the OSCE in the economic dimension, based on its consolidated mandate and experience. The OSCE/OCEEA is ready to take on further responsibilities and renew its impetus towards greater effectiveness and coherence of migration governance in the OSCE region. Indeed, these *key findings* pave the way to the elaboration of a multiannual planning and the enhancement of advisory, research as well as capacity-building tools and activities in line with the identified priorities that will be proposed for funding to relevant donors.

Yet, such potential can be fully harvested only with **adequate financial and human resources.** In order to carry out its role and related activities, the OSCE/OCEEA relies significantly on Extra-Budgetary contributions. On the other hand, out of the current 5 full-time staff working at the Economic Governance Unit - of whom 2 contracted and 3 seconded officers – only one seconded officer deals with the Office migration-related portfolio. The high turn-over of seconded personnel hinders significantly enhanced effectiveness and continuity of efforts vis-à-vis a growing workload and requests for assistance from an increasing number of participating States. The Office would therefore benefit at least from one additional contracted position – responsible for the migration-related activities - in addition to the existing seconded one.

# End notes

i For a full description of the OSCE commitments in the field of migration governance see the paragraph "*The role and the mandate of the OSCE in the field of migration governance*" of this document.

ii The commitments relevant to the economic dimension include also: the 2006 Brussels Ministerial *Statement on Migration*, MC.DOC/6/06 and the Permanent Council Decision No. 557 (2003) *OSCE Action Plan to Combat Trafficking in Human Beings*, Section IV "Prevention of Trafficking in Human Beings", paragraphs 3, 7, and 12.

iii The term "illegal" is put into brackets as the OSCE supports the *Recommended Principles and Guidelines on Human Rights at International Borders* of the Office of the High Commissioner for Human Rights, which suggest refraining from the use of terms such as "illegal" when referring to irregular migration or migrants in an irregular situation, or "combatting" or "fighting" when referring to actions aimed at identifying proper responses to migration-related policy dilemmas, <http://www.ohchr.org/Documents/Issues/Migration/A-69-CRP-1_en.pdf>, accessed 25 January 2015.

iv See, *inter alia*: de Haas H., *The myth of invasion*, *The inconvenient realities of African Migration to Europe*, 2008, <http://www.imi.ox.ac.uk/pdfs/hein-de-haas-the-myth-of-invasion-the-inconvenient-realities-of-african-migration-to-europe/view#sthash.gRMst6aU.dpuf>, accessed 20 January 2015; Collier P., *Exodus*, *Immigration and Multiculturalism in the 21st Century*, Oxford University Press, October 2013; Clemens M. and Sandefur J., *Let the People Go, The Problem With Strict Migration Limits*, in Foreign Affairs, January/February 2014 issue, <http://www.foreignaffairs.com/articles/140354/michael-clemens-and-justin-sandefur/let-the-people-go>, accessed 20 January 2015.

v Among others see: J. Edward Taylor, Mateusz J. Filipski, Mohamad Allousha, Anubhab Gupta, Ruben Irvin Rojas Valdesa, and Ernesto Gonzalez-Estrada, *Economic impact of refugees*, Edited by Prabhu L. Pingali, Cornell University, Ithaca, NY, http://www.pnas.org/content/early/2016/06/15/1604566113.full.pdf?sid=1bd6a0f1-ead3-4fd2-a6ba-6d2fdc6a6a14 (accessed 26 June 2016)

vi Despite an increase in usage the expression, there is still no clear, universally accepted definition of social dumping. According to Eurofound, the European Foundation for the Improvement of Living and Working Conditions, the practice is described as a 'situation in where foreign service providers can undercut local service providers because their labour standards are lower'. http://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/social-dumping-0 (accessed on 26 June 2016)

vii According to the 1951 Refugee Convention, a '**refugee**' is defined as **a person who is outside his/her country of origin and cannot return there**, due to "*a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion* [….]", while an asylum seeker is someone who has applied for protection as a refugee and is awaiting the determination of his/her status. States' authorities/mechanisms – often in the form of Commissions or Committees for the determination of the refugee status – are responsible to scrutinize the requests for protection and - on the basis of objective and subjective evidences - decide whether individuals are eligible to international protection as refugees. Despite consolidated jurisprudence, this process is highly volatile and subject to different interpretations according to the 'legal' culture (see the definition and works of David Nelken on the concept of legal culture: https://www.law.berkeley.edu/files/Nelken_-_Using_the_Concept_of_Legal_Culture.pdf accessed on 16 June 2016) and the 'democratic' culture of the State assessing the request.

With reference to '**migrant**', the UN has elaborated a definition for statistical purposes, as a person who moves his/her residence for a minimum period of 12 months, regardless of the motives for this movement.

There is an internationally agreed definition of '**migrant worker**', enshrined in ILO (International Labour Organization) and UN instruments. The *UN Convention on the rights of migrant workers and the members of their family* (ICRMW) describes the migrant worker as a person "*who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national*" (Article 2(1)) of the ICRMW.

The discussion on definitions is relevant in terms of recognition of rights which are specific to certain categories of people on the move, and in particular the rights related to residence and work in the destination country, as well as social, economic and cultural integration. International definitions are living concepts that are applied and enforced by States' authorities.