Written contribution from The Salvation Army in response to:

**The Legal Migration Fitness Check**

*September 2017*

This contribution is sent on behalf of a number of countries from around Europe where The Salvation Army is particularly active on the issue of migration, and in particular based on our experience as key actors in the provision of social services where we meet migrants on a daily basis, including those who have arrived via legal channels as well as those who are undocumented.

This contribution has received input from the following countries: Germany, Greece, Italy, Sweden, Switzerland and UK. This contribution was based on a simplified questionnaire prepared by Social Platform of which The Salvation Army is a member in preparation for a consultation meeting organised between civil society and The European Commission on 23 June 2017.

**KEY MESSAGES:**

- Few legal channels for refugees to reach Europe plays directly into the hands of smugglers and traffickers who exploit this gap
- Political will by the Member States to implement EU legislation effectively and to enforce people’s rights is urgently needed
- The Dublin agreement is no longer “fit for purpose” and a trans-national approach is needed
- There is an urgent need for a child-friendly asylum system to prevent child trafficking/exploitation
- Investing in integration is more effective and sustainable than security alone
- Reduced spending on integration will create more vulnerable groups and increase poverty of migrants
- Europe needs to address demographic change/growing inequalities/digitalisation
- Europe needs to address discrimination, xenophobic/racist rhetoric
- Validation processes for qualifications from third country nationals need to be improved especially in the sectors with workforce shortages to ensure a quick entry onto the labour market
- Labour and social rights for migrants are becoming increasingly precarious

**Are the legal migration Directives are still relevant?**

The objective of EU immigration policy is to harmonise and expand European and international cooperation to ensure a sustainable policy that protects the right to asylum, facilitates freedom of movement across borders, promotes needs-based labour immigration and which considers and takes care of the development effects of migration. However based on the daily experience in assisting third-countries citizens to obtain a legal permit/residence in the EU, The Salvation Army observes that there are still many people using the illegal networks to immigrate to the EU.

Even though the EU prides itself on being a champion of highest human rights standards, there is one issue which deserves particular attention: the question of access to asylum and international
protection. At present, there are very few legal channels for refugees to reach Europe. In order to be able to lodge the asylum claim refugees have to come to Europe. That means that they need to cross the border to reach the European territory. Border crossing is illegal unless the potential asylum seeker is in a possession of a visa – the requirement imposed to almost all the countries of origin of migrants. In the absence of a visa the only way to reach the European shores is to resort to the services of smugglers and traffickers. This is the fundamental flaw of asylum and migration policies casting doubt on the recognized rhetoric of the existence of the legal right to seek asylum.

The Salvation Army is particularly concerned that this incongruity plays directly into the hands of smugglers and traffickers who exploit this gap and charge huge sums of money for their services. Smugglers and traffickers are criminals, but they are only a symptom not the cause, as they provide refugees with a possibility to access Europe in the first place. By making the crossing of borders ever harder the EU is indirectly engaging in the smugglers’ business. Fighting smugglers and traffickers is unlikely to succeed unless accompanied by a forceful set of measures aimed at addressing the root causes of migrant movements.

European countries have been tightening their migration regimes for the past few years. Extremely difficult conditions have been created the last few years all over Europe in order to try to deter people from seeking asylum in Europe. The directives should be there to regulate the system and be based on common values. This is extremely relevant in order to avoid arbitrariness. However, we see that some adaptations do not necessarily meet the previously defined requirements of a European asylum policy with a high level of protection and a fair asylum procedure. We question whether the relevance of the law needs to be reviewed or whether the actual problem lies in the political acceptance and implementation of it by the Member States.

The Salvation Army believes that the Dublin Agreement of 1993, according to which the country of entry must deal with asylum applications etc., is no longer “fit for purpose” and a trans-national approach is needed if Europe is to effectively deal with continuing flows comparable to those of 2015-2016.

Furthermore the fact that people are being sent to factually unsafe third countries like Libya or Morocco, as well as Turkey under the EU-Turkey deal, is problematic regarding human rights. Conditions in Turkey for example do not meet the standards of a safe third country or safe country of asylum and was not able to provide effective protection for refugees.

**New societal challenges (demographic, economic...) and new needs in the EU that will impact the migration flows to the EU now and in the future**

The first and the most important challenge is the change caused by conflicts and civil wars in the Middle East and the political turmoil in Africa resulting in torn, barely functioning or failed states, unable to provide security and prosperity for their citizens. The 2003 invasion of Iraq has sparked the first wave of refugees, most of which settled in the neighbouring countries. Back then, barring Sweden, very few European countries admitted a significant number of Iraqis. Today many countries in this region, such as Lebanon and Jordan, are home to a large number of refugees from previous Israeli-Palestinian conflicts. The capacities of these countries are already stretched and the new wave of refugees fleeing Iraq and Syria seriously threatens their social capacities, internal peace and security.

The current migrant crisis has put a spotlight on how domestic politics of individual European countries could undermine the importance for a fair and thorough debate. Because of the rise of anti-immigrant, extreme right parties in Europe, migration has become a subject of political
bickering in almost every EU country. There is clearly no silver bullet solution, neither is the one size fits all approach likely to work. Support for proposals to welcome more migrants carry high political risks and are often considered as ‘no-go’. The established patterns in the media portraying migrants as a burden on welfare systems or prone to criminal activities are hard to break.

The Salvation Army also witnesses that the increasing difference between rich and poor is an enormous challenge globally. Increasing inequalities has great potential for frustration and social unrest within but also across Member States. The increased isolationism, nationalism and populism in certain European countries clearly contribute to harsher regulations and decreased minimum standards. However demographic change is also proving a challenge for Europe. In the future we will need more people with qualifications to work in particular in the social and health care sector e.g. for child and elderly care (in Germany for example).

Digitalization/automatization will increasingly become a challenge. Nationals with low qualifications in Europe are replaced by migrants with low salary demands. Additionally, some companies have moved overseas for economic reasons.

In some countries money is actually being moved away from measures on integration, social assistance and emergency aid while investing more in security costs (used to avoid migration flows and security in asylum centres) (Switzerland). We agree that security needs must be taken seriously and has its undeniable importance, but we question whether these increased investments in security are for the protection of citizens and refugees or to prevent refugees from accessing Europe. The Salvation Army has had the experience that potential for conflict for example in asylum centres is much less when quality integration measures are accessible, and in the long-term are more sustainable than security measures.

We fear the reduction of social assistance due to harsh austerity measures will increase poverty among migrants. A lack of financial resources has a large impact especially on children, which can lead to longer-term social challenges. These reductions will particularly affect the most vulnerable individuals who may go through several integration programs, but will not achieve targets for various reasons (e.g., depression, learning difficulties or trauma).

How could future developments of the EU legislation better adapt it to these new challenges and needs?

The Salvation Army believes that responding to migration challenges implies mobilizing a broad network of partners to facilitate consultative, multi-stakeholder processes, ensuring that migration priorities are in accordance with the country’s overall development strategy. Such an approach means considering people on the move in a comprehensive manner, no longer focusing on one single category of migrants but rather aiming at protecting all people on the move throughout the entire cycle of migration, in accordance with a transnational approach to migration and mobility.

We also believe that there needs to be a better validation process for qualifications from third country nationals especially in the sectors where workers are needed. There are well-qualified people in Germany for example, but they can’t work because their certification isn’t recognised in Germany.

What COHERENCE in legal migration legislation is there? What possible inconsistencies, gaps and overlaps exist between the Directives, as well as in relation to national law and the other EU policies?
In the past decade, labour migration within the EU as well as from outside the EU has evolved significantly. There are more temporary forms of labour migration. This evolution has led to an increasing vulnerability of labour migrants’ rights. In particular, the employment and social rights of these migrants are subject to political discussions and legal disputes. Sub-standard protection in these areas is often considered to lead to “social dumping” of workers and “unfair competition” between employers.

Referring to illegally staying third-country nationals the legislation does not contain an equal treatment clause guaranteeing the workers involved equal treatment as regards employment and social security rights with the nationals of the host Member State. Therefore, the extent of the employment or social security rights such workers have in a Member State fully depends on the domestic legislation of each of the Member States, most of which have adopted very different approaches in this respect. Moreover, it appears that in practice the Member States are mainly interested in the return of the irregular immigrants to their host State. In addition, an expulsion measure could very well jeopardize their employment and social security rights.

The Directive on Seasonal Workers determines the conditions of entry, stay and access to the labour market for a limited period for third-country seasonal workers in the EU Member States and defines their rights. It provides for a simplified and uniform procedure for the admission of seasonal workers from third countries. It seeks to respond to the needs of Member States for temporary and seasonal low-skilled workers in sectors like agriculture and tourism, and to ensure decent working and living conditions for these seasonal workers. It is also designed to promote circular migration of these workers, so as to avoid that these workers become permanent residents in the EU, but at the same time it allows them to come back several years in a row to perform seasonal work. This directive introduces a “controlled admission system which requires workers to have a job to go to, as well as means to support themselves before admission”. Indeed, for seasonal workers staying no longer than 90 days, Member States shall require that the seasonal worker will have no recourse to their social assistance system (Article 5(3)) and for those staying more than 90 days Member States shall require that the seasonal worker will have sufficient resources during his or her stay to maintain him/herself without having recourse to their social assistance system (Article 6(3)). These provisions imply that seasonal workers do not have access to the social assistance systems of the host state.

Still, as regards employment and social security rights this Directive also contains an equal treatment clause (Article 23). It guarantees the seasonal worker admitted to the host Member State under this directive equal treatment with nationals of this State with regard to all terms of employment, the right to strike and take industrial action as well as freedom of association. It also provides for equality of treatment with nationals of the host country regarding back payments regarding any outstanding remuneration to be made by the employers to the third-country national.

The Single Permit Directive 2011/98/EU contains an elaborate provision on the right to equal treatment (Article 12). It stipulates that third-country workers, who are covered by this directive, shall enjoy equal treatment with nationals of the Member State where they reside with regard to employment conditions (including freedom of association and affiliation and membership of an organization representing workers) as well as for branches of social security, as defined in Regulation 883/2004.

However, Member States may restrict equal treatment by limiting social security rights (see Article 12(2)(b)). Indeed, Member States may limit equal treatment for these rights for those third-country workers who are no longer in employment after having been employed for less than six months. This would put those who become unemployed very soon after their entry into the labour market of the host State in a highly vulnerable position, since this provision would allow Member States to
refuse unemployment benefits and other social security benefits, such as family benefits or sickness benefits, to these workers. It would even jeopardize their right to remain in that country. Family benefits may also be refused to third-country workers who have only been authorized to work for a period not exceeding six months, to third-country nationals who have been admitted for the purpose of study, or who are allowed to work on the basis of a visa. Moreover, recital 24 states that this directive does not grant rights in situations which lie outside the scope of Union law, such as in the case of family members residing in a third country. This means that under this directive Member States are not obliged to grant family benefits for members of the family who are not residing in a Member State.

Summary

The Salvation Army understands that the objective of harmonization should be to create legal certainty for asylum seekers by treating them equally in each Member State. Protection and the likelihood of recognition of their request should not be a question of chance. Indeed, the regional inequalities such as employment rates, housing markets, etc. should be taken into consideration, but minimum quality standards need to be ensured. Besides, controlling measures often focus on quantitative figures rather than qualitative ones. Current directives are already an agreement on the lowest common denominator. As such, we have to be careful when we look for a “simplification”.

How effective and efficient is the legal migration legislation?

The Salvation Army has observed until now a limited success in effective management of the immigration flows, in establishing secure pathways, and in social integration. We observe that the impact of national elections, during which governments have had to deal with the negative perception of immigrants fuelled by extreme nationalist parties and by the popular press, has slowed the development of any trans-national response, with various countries either closing their borders or being slow to accept their agreed quota of refugees.

The Dublin agreement requirement that the first country of arrival deal with asylum applications has meant that both Greece and Italy have borne the brunt of the exceptionally high numbers arriving in 2015 and 2017, and the public infrastructure has, understandably, been unable to deal with the demands of processing the applications according to the expected timescale.

As regards the employment and social security rights of third country workers, EU legal instruments provide for a very fragmented and sometimes contradictory set of rules. They ensure, in principle, equal treatment of these workers with the nationals of the host Member State, albeit with a number of specific exceptions. Almost all of the examined legal instruments provide for equal treatment with the nationals of the host Member State with regard to working conditions, including pay. This is not the case for the employment rights of temporary workers, such as inter-corporate transferees. Moreover, the application of EU Private International Law instruments, such as the Posting of Workers Directive and the Rome I Regulation, may well lead to situations in which the law applicable to the employment contract of the third-country worker posted or seconded in an EU Member State, is not the law of the host State, but continues to be that of the country of origin.

In the field of social security rights even more exceptions to the equal treatment rule are allowed, more specifically for the rights of labour migrants who are only active in a Member State for a short period or whose access to its labour market is limited in time. These exceptions concern in particular family benefits and unemployment benefits. They contribute to the precariousness of the employment conditions of temporary migrant workers and to the vulnerability of these workers to abuse and exploitation. In addition, the coordination between the social security schemes of the
Member States on the one hand and third countries on the other continue to depend mainly on the existence and the content of bilateral agreements concluded between Member States and third countries. In particular the aggregation of periods of employment, insurance and residence for the purpose of obtaining and maintaining social security benefits in the host state, depends almost entirely on such bilateral agreements.

In Greece The Salvation Army witnesses a worrying pattern of unaccompanied minors being exploited for sexual services in particular in Athens. These children are deceived in that they offer their services at costs that can be as little as 0,50€, thinking they will make enough money to pay for the journey to their parents in northern Europe. One factor of vulnerable unaccompanied minors being trafficked is that the current national capacity to accommodate children in shelters is seriously lacking. The remaining children are on a waiting list for referral for accommodation and the numbers are growing. We would emphasise the need for more and better accommodation/ safe houses, efficient procedures, and better child involvement that results in the UAC’s best interest. We would stress the important of efficient, unified, articulated, intentional procedures that are communicated to service providers and that they are followed and enforced. In order to be followed and enforced, it would mean having enough personnel to do so in that structure.

In terms of longer -term integration of unaccompanied minors, The Salvation Army meets and works with many of the most vulnerable, and we see time after time how they slowly start to grow trust and hope under our care, and then suddenly when they turn 18 their whole world falls apart as they are sent out of the country into a completely unknown and uncertain situation without any adult network around them.

For unaccompanied minors The Salvation Army strongly recommends a child-friendly asylum system (especially in the Dublin-Procedure), a focus on child-safe reception centres, well-trained frontline officers, an immediate appointment of legal guardian for unaccompanied minors and the need for early identification for victims (human trafficking or other forms of exploitation).

Family Reunification - The lack of case workers in the field is problematic. From a UK perspective there is only 1 Home Office official working in Italy, Italy and France. This is simply not enough to work on the cases of children who have relatives in the UK. There needs to be collective political will and serious financial investment in the number of lawyers/case workers with the children and in the ‘camps’ who can research cases and establish family links. The time it takes to identify a family connection and reunite family members is also problematic. It needs to be done swiftly and without delay. Currently there are thousands of children who the authorities think may have family in other countries but their cases can take months to sort out. In the meantime the children will seek other (dangerous) routes.

Extended family members who receive a child into their care can in some cases be already in difficult situations themselves. They may live in inadequate, overcrowded living conditions and taking on another person will make things more difficult. In some cases extended families have never met the family member they are now responsible for - there are concerns about monitoring how those relationships develop. It is imperative that governments provide/fund social workers/support workers to support families with additional members and to ensure that living conditions are adequate. Children who are unified with family members require support to deal with mental health, PTSD, war trauma as well as educational/language support.

**What evidence of good practice? Where is scope for more efficient implementation?**

- **Focus on rapid integration into the labour market**

We would encourage incentivization for migrants to acquire the necessary language and basic competences that would support their quick entry onto the European labour market. However in some countries (Switzerland), there are plans to reinforce incentives for rapid integration by making social assistance and the form of housing conditional on the level of integration. We believe this will
lead to cases in which people will spend years in collective accommodation (where privacy and personal development are limited, especially people with health issues and unable to study or work). Furthermore, from experience we know that people who live during a long time in collective accommodations lose their independence and motivation for learning and integration. For this reason affordable housing is essential for integration.

With young adults up to 25 years, the focus should be on the quick access to the regular structures of vocational training or middle school education. For adults (over 25 years), the focus should be the rapid integration into the labour market.

**Individual and achievable objectives** need to be defined with each asylum seeker/refugee in order to assess the integration performance and to maintain the person's motivation e.g. aims such as A1 for people who are illiterate or the employment of illiterate people are hardly achievable, which can have a demotivating effect.

Furthermore, the approach of a resource-oriented integration is rarely considered. Many migrants have resources that our labour market and society can benefit from. Thus, besides a reduction of structural obstacles (see also next point) promotion of integration such as access to scholarships, recognition of diplomas, etc. is needed. Investing in existing resources can have a positive effect on their motivation.

- **Cooperation with business**
  
  The introduction or expansion of innovative business models such as, for example, the partial wage payment model. Of course these models need to involve discussion with trade unions. Additionally, the (administrative) hurdles for companies, when employing people from the asylum system, should be kept as low as possible. Social enterprises (especially WISE) should be promoted and supported by governments that target migrant groups as they are particularly effective in engaging vulnerable groups.

- **Increased involvement of volunteers**
  
  For integration work, volunteers are a great resource. Yet, the term "complementary" support is central. In any case, the field of activity of a volunteer must be clearly defined and it needs to be differentiated from the tasks of staff members. Volunteer coordination is also of crucial importance for the successful cooperation between volunteers and professionals.

- **Community Refugee Sponsorship Programmes**
  
  We would also support the development of government funded programmes that allow community and faith-based groups (including churches) to sponsor refugees and provide a social network and personalised support in integration into the local community. See more [here](#) for UK example where The Salvation Army is sponsoring a family.

- **Health**
  
  Health problems can have an impact on learning ability, training or job seeking. The needs of vulnerable people should be addressed more specifically. This should include psychosocial support, preventive measures, professional housing structures for asylum and refugees with mental health problems, etc.

- **Awareness raising and advocacy**
  
  Integration of migrants is a process that not only concerns the migrants but also the entire local population. It is necessary to tackle prejudice and discrimination. (Positive) awareness raising measures have a long-term positive effect on the social coexistence, besides being more economical than other measures.

- **Looking globally**
The scale of immigration into the EU zone is comparable to that which the USA has long experienced and seems to have developed effective approaches, especially in terms of integrating ethnic groupings which, while maintaining their distinctive characteristics, nevertheless regard themselves as American (e.g. Italo-American, Afro-American....)

EU ADDED VALUE: what have been the positive effects and results brought in by the EU legislation compared to what could have been achieved at national level?

Apart from the discussion on granting and defining rights, The Salvation Army believes that there should also be a debate on the effective access to these rights and the enforcement thereof especially because non-compliance with these rights can be considered as one of the main sources of exploitation.

The EU institutions have failed to develop a coordinated labour migration policy of the Member States, the latter having retained the main competence to decide on the conditions as well as on the number of third-country labour migrants they admit to their labour market. The European Union was only fragmentally and gradually able to develop an arsenal of rules of its own in this field, still leaving a lot of leeway for the Member States to implement them.

However, the fact of having a European framework helps and at the same time asks the Member States to improve their domestic legislation and to protect the rights of the migrants in Europe. Considering the increase of racism and hate against refugees a European framework is essential.

We believe in the need for consistency of laws, regulations, standards and practices, so that the same rules apply to all people, independent of their background, sex, religion, age, etc., avoiding arbitrary, emotional and interest driven positions, based rather on common values.