

Name [Insert name of Members of the JHA Working Group],
Member of the Justice and Home Affairs Working Group of the Council
[Insert name / address of Ministry / PermRep + country]

Cc: Name [Insert name of CODEV member of same country]
Member of the CODEV Working Group of the Council

Brussels, 6 April 2012

Dear [Insert name of JHA WG Member]

Subject: Council Conclusions on the Global Approach on Migration and Mobility

We are writing to you on behalf of the undersigned organisations working in the field of migration and development regarding the ongoing discussions in the Council of the EU on its Conclusions on the Commission's Communication on the Global Approach to Migration and Mobility (GAMM) and its Staff Working Paper on Migration and Development. Our comments and recommendations therefore focus on the external dimension of the GAMM, especially its relevance for the migration and development nexus.

We welcome the strong commitment expressed in the GAMM to set path towards a strategic approach promoting mobility of third country nationals across EU borders. We especially applaud the explicit reference to human rights of migrants and the stated objectives to adopt a migrant centred approach and to protect and empower vulnerable migrants.

However, we regret that migration and development is only the subject of the Staff Working Paper and not a fully fledged Communication whose scope and political implications would be higher. In particular we are concerned that the positive development points of analysis and subsequent recommendations addressed in the EC Staff Working Paper on Migration and Development have not been mentioned as clearly in the GAMM Communication.

We would like to point out several areas of concern where we believe the Council conclusions could improve the Commission's proposal. Thus, we recommend that the Council:

- 1. Reinforce and materialise a migrants centred approach at the heart of EU migration policies**
- 2. Enhance the portability of pensions and social rights**
- 3. Put child protection considerations at the centre of the GAMM**
- 4. Ensure that circular migration policies and "brain gain" optimise the positive effects of migration for development**
- 5. Make Policy Coherence for Development a reality**
- 6. Recognize migrant integration as a core element of migration and development nexus**
- 7. Broaden the role of civil society and Diaspora in migration and development**
- 8. Guarantee that Mobility Partnerships take into account European and International human rights standards**

Please see the details of our recommendations and specific proposals for wording in the annexed document.

It is our great hope that [Insert Name of country] will be a strong supporter of a migrant-centred and rights-based GAMM, which will address adequately the migration and development nexus. Hence we hope that you will take our recommendations into consideration when defining [Insert Name of country]'s position in the Council.

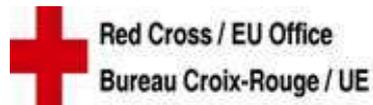
We would like also to request that Cyprus includes the implementation of the GAMM as a key priority of its EU Presidency.

Yours sincerely,

On behalf of the organizations listed below:



www.concordeurope.org



www.redcross-eu.net



www.eunomad.org



www.icmc.net



www.ceforec.eu



www.ccme.be

ANNEX

Detailed Recommendations and Specific Wording for Council Conclusions on GAMM

1. Reinforce and materialise a migrants centred approach at the heart of EU migration policies

In spite of the stated intention to adopt a migrant centred approach, the analysis and recommendations of the GAMM clearly privilege a strong Eurocentric and market based approach. If a “Migrants Centred” approach is to be achieved, it requires clarity on the appropriate framework that will be used throughout the four pillars of the GAMM. A human rights based approach is the conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.

It is our fundamental belief that a migrants centered approach needs to be grounded on the realisation of human rights as laid down in the EU Charter for Fundamental Rights, the Universal Declaration of Human Rights and other international human rights legal instruments.

A migrant-centred approach should also imply the enhancement of protection-sensitive measures to identify assistance and protection needs and adequate assistance and protection mechanisms. In this regard, particular attention should be given to mixed migration movements – particularly in countries of transit – by putting in place a mixture of protection and assistance tools for a varied number of groups, including asylum seekers, victims of trafficking, vulnerable undocumented migrants – particularly women and children-, and victims of SGBV and exploitation.

In addition, a human rights based and migrant centred approach should be helpful to properly analyse the root causes of forced migration notably conflicts, climate change, unemployment, poverty and ensure that the GAMM offers adequate responses to these.

We urge the Council to:

- Adopt a Human Rights Based approach and its accompanying principles as core elements of each of the four pillars with a special focus on the most vulnerable migrants;
- Ensure that the GAMM enhances the capacities of EU Member States and of partner countries to meet their obligations to respect, protect and fulfill the human rights of all migrants and of migrants to claim their rights;
- Commit to reflect on how the human rights and migrants centred approach will be concretely implemented and mainstreamed within the various policy instruments that are being used by the GAMM;
- Request the European Commission to propose a migrant-centred implementation of the GAMM within 6 months after the Council Conclusions in May 2012. This Plan must be prepared in consultation with CSOs, including migrants’ organisations and Diasporas;
- Urge the EU Member States to take the lead in the ratification process of the ILO Convention on Domestic workers (C189), and other related ILO Conventions including UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

2. Enhance the portability of pensions and social rights

The portability of social rights is another strategic element of critical importance to take into account in the implementation of the GAMM. Migrants and their families, in particular undocumented migrants rarely receive full social protection or access to health care because they have not access to it or have to undergo a long waiting period either inter alia because their family members live in different countries. It is of utmost importance that this will be addressed in a thorough manner as these rights are central pillars of the Charter of Fundamental Rights. In addition, the full implementation of the relevant ILO Convention C97, C143, C189 as well the UN Convention on the Protection of the Rights of All Migrant Workers is of paramount importance.

We urge the Council to address social protection and access to social and health service to all migrants irrespective of their residential status with a specific focus on vulnerable people throughout the related instruments that are part of the four pillars of the GAMM.

3. Emphasizing child protection considerations in the EU migration policies

We would like to express concerns about the weak place children and the protection of their rights take in the GAMM. There is hard evidence today showing that children reach EU as migrants not only accompanied by their parents but also alone, with peers or accompanied by other adults. Their status can be both regular and irregular. The number of these child migrants is expected to increase due to inter alia climate change, failing states, lack of access to qualitative education, lack of economic opportunities and general child protection measures in their origin communities.

Research conducted shows that even migrant children with regular status suffer from lower living standards, increased xenophobia and discrimination within the EU Member States. The situation of children residing irregularly within the EU is even more of concern. Member States legislations and policies still different largely in terms of protection and access to services offered to undocumented migrant children.

In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials. In other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age and gender-sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many such children are granted only temporary status, which ends when they turn 18, and there are few effective return programmes.

We urge the Council to:

- Shift from a security to a human rights approach ensuring the protection and respect of the rights of the child as prescribed by the Convention on the Rights of the Child and regardless of the nationality and migration status of the child;
- Promote Member States to better implement their anti-xenophobia and anti-discrimination legislation and policies as well as encourage evidence based discussions at the public domain on the situation of migrant children within the EU;
- Adopt a more holistic approach linking the EU policies on migration, development, asylum, education, employment, anti-trafficking, and health and pay specific attention in all of them to child protection and development issues;
- Combine migration management measures with more opportunities and information for safe migration targeting all group ages, including children and youth.

4. Ensure that circular migration policies and “brain gain” optimise the positive effects of migration for development

Past experiences have confirmed that circular migration can play an enabling role in development if it is seen as a continuum, long term and fluid movement of people. However, we note that circular migration is mostly addressed in the GAMM from a legal perspective in the first pillar¹ whereas it concerns all migrants irrespective of their status. Thus circular migration in the development dimension fails to be addressed adequately in the GAMM.

¹ In the GAMM, the EU has defined circular migration “as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries”

A key element of the migration and development nexus that is addressed by the GAMM is the issue of “brain drain”. While respecting the right of qualified migrants to exercise their freedom of movement, attention must be paid to the numerous studies that have highlighted the obstacles to development posed by the “brain drain” effect, notably in the medical and health services of low income countries in Africa and other regions of the world.

While, we also welcome in the first pillar efforts towards the recognition of foreign diplomas, the GAMM recommendations are mostly medium or long term. Immediate responses to brain waste are necessary.

We urge the Council to:

- Broaden the circular migration to the fourth pillar of the GAMM on migration and development and make sure all migrants irrespective of their residential status can profit from it;
- Promote the “WHO Code of practice” on the international recruitment of health personnel² to both the public and the private sectors;
- Ask the Commission to examine ways to enable the transfer of competences back to the countries of origin and use the opportunity of the “Agenda for New Skills and Jobs ” to accelerate the adoption of measures to recognize the qualifications of migrants and the withdrawal of discriminatory measures against holders of foreign diplomas;
- Ensure that the GAMM will provide short-term measures to tackle the current problem of “brain drain” and “brain waste”.

5. Make Policy Coherence for Development a reality

While we welcome the effort towards greater policy consistency, the concept of “coherence” used in the GAMM is not the same as the Treaty obligation of Policy Coherence for Development (PCD).³

This concept provided in the Lisbon Treaty means that, at minimum, the GAMM must not harm development; at best, synergies can be created for the GAMM to contribute to lifting people out of poverty in developing countries. PCD requires that EU migration policy centres on migrants’ rights and protection, with a view to establish linkages between the four pillars of the GAMM and development objectives.

The GAMM’s impact on development must be properly assessed before and during its implementation. Notably, a solid monitoring system and a complaint mechanism should be established to allow correcting specific aspects of the GAMM that may be found harmful for development, therefore in breach with the PCD obligation.

We appreciate that the GAMM recommends supporting partner countries in strengthening the coherence between their migration and development policies, but it must be clarified that, first and foremost, PCD is an obligation on the EU for its own policies.

We urge the Council to:

- Clearly affirm that the GAMM must comply with the obligation of Policy Coherence for Development;
- Coherently address the development related roots causes of migration in the external dimension of the EU migration policy;
- Reinforce the migration and PCD expertise of EU delegations to monitor the coherence of EU migration policies with development objectives. Migration experts appointed in EU delegations should facilitate a country-based dialogue on migration with local stakeholders including CSOs, with the view to detect possible incoherencies and feedback to the Commission and the EEAS in order to lead to the revision of these incoherent measures, in light of PCD;

² GAMM, p 20

³ The article 208 of the Lisbon Treaty provides that the EU must ensure the coherence of all policies likely to affect developing countries – including migration policy – with the EU’s development objectives that centre on poverty eradication.

- Improve the existing Extended Migration Profiles process by adding data and evidence of coherence or incoherencies of the EU migration policies with development objectives.
- Ask the Commission in line with the 2020 strategy, to put into place a monitoring system at macro and micro levels with the objective to monitor migrants “well being” throughout the four pillars of the GAMM;
- Ensure that the biennial GAMM report will include an evaluation of the GAMM’s impact on development objectives and its impact on the human rights of migrants, notably based on feedback from EU delegations’ migration and PCD focal points;
- Involve CSOs, including migrants’ organisations in the monitoring, benchmarking and reporting processes of the GAMM;
- Establish a formal EU internal complaint and mediation mechanism entitled to receive and process complaints lodged by citizens or community groups in developing countries affected by harmful deployment of GAMM measures and incoherencies actions with regard to development.

6. Recognize migrant integration as a core element of migration and development nexus

We note that integration is very much absent from the migration and development pillar in the GAMM whereas some positive development on integration is mentioned in the Staff Working Paper on migration and development (the need to promote decent work and core labour standards, “integration of migrants to be human rights based”, the need to pay attention to vulnerable people and to improve integration of migrants in countries of destination)

However, despite the commitment of the 2020 Strategy to building an inclusive Europe, barriers continue to prevent third country nationals from participation in the labour markets of the EU member states. These structural barriers were identified by numerous reports of the European Agency of Fundamental Rights.

The tightening of immigration policies in the EU has resulted in the development of a negative perception of migrants. The need to recognise the positive impacts of migration for both the receiving country and the country of origin is crucial.

We urge the Council to recognize that integration is a central element for empowering migrants as actors of change in the migration and development nexus.

7. Broaden the role of civil society and Diaspora in migration and development

We welcome the EC’s proposal to take into account the civil society as a key partner for implementing initiatives in the field of global migration.⁴ However, in order to increase the effectiveness of the GAMM and its Staff Working Paper on Migration and Development, an enabling environment needs to be created for civil society and Diasporas. The GAMM already underlines the role of Diaspora but mostly from a financial and economic perspective. It is important that the GAMM moves beyond the financial and economic dimension of migrant’s role and recognise their social and cultural contribution to both countries of residence and destination.

We urge the Council to:

- Recognise the civil society and Diaspora as key actors for change in the development and migration nexus and involve them in policy formulation and implementation;
- Ensure that the GAMM provides clear guidance on strengthening the role of civil society and Diaspora as key development and migration actors;
- Provide adequate capacity building not only to partner countries but also to civil society and Diaspora associations in partner countries and in Europe;

⁴ GAMM §1

- Request that EU Delegations organise a structured dialogue with local CSOs to discuss EU migration policies schedule consultations on the programming of EU assistance.

8. Guarantee that Mobility Partnerships (and the Common Agenda on Migration and Mobility) take into account European and International human rights standards

We welcome the European Commission's intention to provide, through Mobility Partnerships, mutual benefit for both the EU and its partners.

However, we have observed severe shortcomings in the existing Mobility Partnerships, such as their lack of consistency with human rights standards and lack of coherence with development objectives.

We urge the Council to:

- Guarantee that Mobility Partnerships are consistent with the international Human rights legal framework;
- Ban conditionality's to development aid relating to migration reduction, in bilateral and multilateral negotiations carried out by the EU and its Member States;
- Forbid the use of development aid money to finance cooperation projects aimed at strengthening border control and fight against irregular migration – as there are no clear development objectives;
- Establish in cooperation frameworks sanction mechanisms against partner countries, that would infringe migrants' rights.

In the perspective of the upcoming UN high level dialogue on Migration and Development in 2013, the EU should adopt an approach to migration and development that is truly beneficial to migrants, EU partners countries and the EU member states. In addition, the EU should strengthen its involvement in global fora such as within the Global Forum on Migration and Development (GFMD).