CONCORD submission to the Discussion Paper ‘Migration and Mobility for Development: Towards a migrant-centered approach’

From: CONCORD Secretariat  
To: Europeaid-Mig@ec.europa.eu  
Submitted on: Monday 30th May, 2011

CONCORD is the European confederation of relief and development NGOs, representing 25 national NGO platforms and 18 international networks across Europe. Its national associations and international networks represent around 1600 NGOs that are supported by millions of European citizens and are working with millions of people in poverty in the developing countries. CONCORD leads reflection and political actions and regularly engages in dialogue with the European institutions and other civil society organisations. CONCORD is part of the Global Call to Action against Poverty, Open Forum for CSO Development effectiveness, and the Spring Alliance. Find out more about CONCORD on www.concordeurope.org.

This submission should be read in parallel with a CONCORD report on policy coherence for development (October 2009), as well as with our submission of to the Green Paper on sustainable growth and sustainable development (January 2011)¹ and with reply to question 5 in particular.

In line with the EC obligations with regard to transparency and to the application of minimum standards for consultation, CONCORD would expect the European Commission to publish the submissions it has received and/or to publish a synthesis of these submissions.

CONCORD member organizations participated in the conference organized jointly by DG Development Cooperation and DG Home Affairs on the 11th April, and we acknowledge this Discussion Paper as a timely and welcomed initiative from DG Development Cooperation in the process leading to the review of the Global Approach to Migration (GAM).

It is our understanding that the consultation on this Discussion Paper will inform the drafting of the Staff Working Paper on Migration and Development that will accompany the communication to be issued in autumn, and that it will largely build on the objectives and targets set in the EU Work Programme for Policy coherence for development (SEC(2010) 421).

General remarks:

1. The Discussion Paper refers to enhancing the external dimension of the EU’s migration policy “to meet the policy objectives and interests of the EU (…)” (p. 1).

However, the PCD agenda does only refer to the development “objectives” of the EU; as stipulated in article 208 of the Treaty on the Functioning of the EU, “the Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.” In its 2010-2013 Work Programme for PCD, the Commission states that it will “ensure that development objectives are taken into account and reconciled with other EU objectives.” In principle, the EU’s interests should comply with this Treaty obligation.

As CONCORD pointed out in a report (2009)², “despite the increasing awareness of the potentially harmful external impact of European policies on people in developing countries, all too often those

policies are inconsistent with the EU’s broader and longer-term economic, social and political interests in the world. Doing no harm at home might be in conflict with development prospects abroad.” It should not be taken for granted that the interests of the EU are necessarily consistent with the development objectives and the interests of partner countries and of the migrants.

Therefore, the reference to the “interests of the EU” is confusing and should be clarified (which interests are being considered, and what is the legal or political basis used to assert these interests).

In this respect, CONCORD stresses that the PCD Work Programme of the EU should serve as a basis for the revision of the GAM, as it should serve as a basis for the implementation by Member States of the PCD agenda in their policies according to the Council conclusions of November 2009 (16079/09).³

2. It is our understanding that the 2011 Global Approach package will “take stock of the progress made since 2005” (p. 1) and will therefore include an assessment of the initiatives and instruments listed in the Discussion Paper (footnote 3).

Regarding the Mobility Partnerships, in particular, the review of the GAM should be the opportunity to verify the common baseline and the objectives of such an instrument. The normative framework for this instrument should be clarified to ensure that the Mobility Partnerships are based on the internationally-agreed Human rights conventions and EU obligations, and that they serve the development objectives of the partner country and preserve and promote the rights of its population and Diaspora abroad.

At the same time, their implementation should be adapted according to the situation of the partner country vis-à-vis the EU and vis-à-vis its regional partners. The EU should be attentive not to impede regional integration (including movement of people) in other parts of the world.

The opportunity of the Mobility Partnerships signed with Cap Verde, Georgia, and Moldova can be discussed as their primary objective seems to be meeting the interests of the EU, i.e. the reinforcement of border controls with these countries of transit for migration routes from the Sahel region and from Central and Southern Asia, respectively.

3. Regarding the context of the review of the Global Approach to Migration:

The Discussion Paper refers to the “revision” of the European Consensus on Development. However, CONCORD has expressed serious concerns about to the orientations and the new paradigms put forward in the Green Paper EU development policy in support of inclusive growth and sustainable development - Increasing the impact of EU development policy.⁴

We stress that the ‘targets’ set in the EU Work Programme PCD (SEC(2010) 421) should be part of the political basis in the GAM revision process; in particular the target consisting in seeking “further progress in the definition and implementation of a common approach to migrants’ rights”.

Regarding the Migration, Mobility and Employment Partnership of the Africa-EU Strategy, CONCORD stresses the recommendations of the first Africa-EU civil society intercontinental dialogue Forum that took place in November 2010 in Cairo.⁵

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² CONCORD, Spotlight on policy coherence (2009).
³ “The Council (…) invites incoming Presidencies, Member States, the Commission and the General Secretariat of the Council, within the scope of their respective competencies, to take work on the PCD work programme forward in order to ensure ownership by all relevant stakeholders and taking into account human rights.”
⁵ http://www.cosv.org/download/centrodocumentazione/civil_society_declaration_en_0.pdf
CONCORD has expressed its concerns about the migration dialogue in the framework of the Cotonou Partnership Agreement\(^6\); that the revision of Article 13 of the Agreement is left pending since the ACP-EU Council of 19 March 2010 demonstrates that this dialogue is marked by serious lack of trust.

4. The proposed approach centered on the migrants must be rooted on **Human rights**:

CONCORD emphasizes that the proposed migrants-centered approach must be conceived as a Human-centred and Rights-based approach. The basis for this approach must be the affirmation that:

- Human beings have the right to develop their human, economic and social potential and should be treated accordingly;
- The right to stay in one’s country of origin or to migrate is a fundamental right;
- Development and migration policies should be systematically assessed against their positive or negative impact on human rights;
- Safety, stability and the respect of their rights enables migrants to become actors of development; Migrants in a secure situation, socially and legally, are able to participate as full actors in the host society; ensuring full human rights facilitates social cohesion.

It is astonishing that the Discussion Paper makes no reference to the international human rights frameworks (UN and ILO conventions, notably) regarding migrants rights that the EU and Member States have committed to (or have not ratified yet, like the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families\(^7\)). The Discussion Paper does not make reference either to the obligations under the EU Treaties (provisions related to the right of residence and mobility, and social rights, notably), neither to the Charter of Fundamental Rights of the European Union (articles 9, 18 and 19, notably) or to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In CONCORD’s views, the international and EU human rights frameworks and regulations that are related to migrants must be recalled and referred to in the communication on the GAM and in the Staff Working Paper on Migration and Development accompanying this communication.

5. The Discussion Paper is characterized by a complete lack of analysis about the **specificity of women’s migration and the needs of migrant women**:

Addressing the “specific needs of migrant women” is stressed in the Discussion Paper (page 5); CONCORD expects the EC to come up with a comprehensive understanding of the specific situation and needs of women migrants, and with gender-disaggregated analysis on the issues developed in this Discussion Paper (role and use of remittances for women, brain-drain and women’s rights, discriminations against migrant women workers, participation of women in the labor market, etc.)

According to a recent publication from WIDE\(^8\), there are several relevant major international human rights conventions with relevance to migrant women’s rights. Besides the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (already mentioned), the other are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Racism and Racial Discrimination, the Convention Against Torture, the Convention on the Elimination of all forms of Discrimination Against Women and the Convention on the Rights of the Child.

The EU legislation and policies regarding women’s migration is abundant and should also serve as a basis for a common EU approach migrants’ rights; in particular, a report of the European Parliament

\(^7\) [http://www2.ohchr.org/english/law/cmw.htm](http://www2.ohchr.org/english/law/cmw.htm)
\(^8\) WIDE, *Women’s labour migration in the context of globalisation* (2010), page 59-65

In CONCORD’s views, the specificity of women’s migration and the rights of migrant women must be recalled and referred to in the communication on the GAM and in the Staff Working Paper on Migration and Development accompanying this communication.

6. Member States share with the European Commission the implementation of the policies and mechanisms referred to and/or proposed in this Discussion Paper; however, the responsibility of Member States in the elaboration and implementation of national and European policies and legislations on migration is not mentioned in the Discussion Paper:

Both the EC and the Member States have the responsibility to protect, promote and implement the international conventions on Human rights, including the conventions relating to the rights of migrants; all Member States should ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

7. The particular situation of countries of transit not reflected, while it is a critical aspect for many of the issues addressed in this Discussion Paper:

Regarding South-South migration, CONCORD would like to emphasise a publication by La Cimade that demonstrates the consequences of the EU migration policy and instruments on intra-migration flows and regional integration in the Sahel region.

“Integrated and migrants-centered approach”:

It would be too far-reaching to repeat in this submission what CONCORD has stressed in previous publications and policy statements, notably to the attention of the European Commission, but it is important to insist here on three ideas, which are also underlined in the Discussion Paper: first, the dynamics between development and migration are complex to analyse; they do not have systematic and immediate cause-and-effect relationship; second, although emigration should be a means by which to achieve personal aspiration, it often becomes the only option for many (‘migration out of choice’); third, the lack of access to decent work opportunities and violations of core labour standards both in countries of origins and in countries of destination are a driving force for the migration and development agenda.

Development is about enlarging people’s opportunities. In this respect, the objective of both the development and the migration policies should be to ensure that migration becomes a safe and out of choice option.

The presentation in the Paper (p.2-3) of the potential benefits of migration for the migrant itself, for the migrant’s family and household, for the countries and local communities of origin, and for the countries of destination is valuable exercise. However, we stress that situations varies between individuals, communities, and countries. This exercise should not be seen as exhaustive but rather as an effort to be continued.

“Issues that need to be addressed”:

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The importance of South-South migration is emphasized in the introductions of this section but it is not analyzed further in the Paper.

A research produced by La Cimade (see reference above) provides comparative figures of migration flows to the EU and intra-Africa migration. It also provides a valuable analysis of the potentially interference of EU migration policies on intra-migration in the region. This research also demonstrates how the rights of ‘potential migrants’ (migrants on transit who have not left the African continent) are neglected.

What are the objectives and interests of the EU to explore the contribution of South-South migration to development, and how does the EU sees its role in this respect?

Mainstreaming: Recent examples (Directives on seasonal workers and on Single Permit) show that mainstreaming development concerns in the EU legislation on migration necessitates both institutional mechanisms in the policy/legislation elaboration phase but also political will and awareness when these policies/legislations are being discussed and approved by policy-makers.

How will the European Commission ensure that development concerns are taken into consideration in all EU migration policies and legislations?

CONCORD considers that there is a risk to prioritize support to third countries according to the EU’s “interests” (control of migration flows from these countries).

How will the European Commission support partner countries to mainstream migration issues in their development policies (including the Poverty Reduction Strategy Papers)?

Will the countries of destination in the South and transit countries (South-South migration) receive support to ensure that the development potential of these migration flows is used according to their respective development strategy? How and through which mechanism (the European Neighborhood Policy, another instrument?)

Diasporas: CONCORD has emphasized the role of migrants as actors of development and the lack of involvement of migrants in the elaboration of the policies on migration and development. We acknowledge the initiatives taken by the Commission to establish networks of migrants’ networks at EU level, while we insist that the motivations should be the aspiration of these stakeholders, as well as the broader civil society (NGOs, trade unions, women associations, youth organisations, farmers organisations, etc.) interested in the nexus between migration and development to be recognized as relevant interlocutors in the elaboration of development and migration policies.

The reference to a “development strategy” (first para. p. 4) as a way of attracting investments, promoting trade, and facilitating the transfer of technologies, knowledge and innovation, should be further developed.

What type of investments and from whom (remittances, as the European Pact on Migration and Asylum suggests, or other type of private investments)? What type of trade relations and to the benefit of whom? What type of knowledge (what about social remittances?)

CONCORD agrees with the need to support the capacities of Diaspora groups in countries of destination, notably to improve integration capacities of migrant communities and to create legal opportunities for migrants (dual citizenship, etc.), as successful integration is the only way to enable

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12 CONCORD, Spotlight on policy coherence (2009), p.22 “Migrants are hardly ever involved in policy-making on issues that concern them in the first place, such as migration and development”; and CONCORD, Response to EC Green Paper EU Development policy in support of inclusive growth and sustainable development: Increasing the impact of EU Development Policy (2011), question 5.
migrants to play an active role in society and for development. It should be emphasized that more financial resources should be made available by the EU (European Commission and Member States) for integration policies.\textsuperscript{13}

\textbf{Remittances}: the EU has reiterated good intentions for a reduction of transaction costs for remittances, in the 2005 Communication on Migration and Development\textsuperscript{14}, in the Africa-EU Strategy (2007), in the Doha Declaration on Financing for development (2008), in the European Pact on Migration and Asylum (2008), and in the conclusions of the General Affairs and External Relations Council of 18-19 May 2009. The necessity of lowering transaction costs for remittances was already highlighted in the Monterrey Consensus (2002).\textsuperscript{15}

EU Member States have focused their attention on enhancing the “impact of remittances on development” through the reduction of transaction costs.\textsuperscript{16} Member States’ strategies still center on improving knowledge and collecting data about remittances; websites for facilitating comparison between transaction fees have been created.

Regarding the African Remittances Institute, CONCORD questioned the approach chosen by the Commission for having opted for solutions in the countries of origin, instead of looking for solutions at European level, for example in Europe-based banks and money transfer agencies.

Promoting the use of remittances as a lever for development (and not strictly as private transfers of funds) should be informed by existing practices in the migrants’ communities; by ‘blending’ development aid with remittances in the form of small-scale private investments, the potential of migrants as actors of development of their country of origin and ownership around the projects implemented can be significantly improved. This also necessitates creating the conditions for acceding to institutional funding or adequate instruments for collective investments.

Channels for transferring remittances that are used to support income generating activities need to be made affordable (transaction costs) but also reliable and gratifying for remittance-sending migrants. The EC and the Member States should seek innovative ways to activate and assist Diaspora communities to \textit{collectively invest} in their countries of origin. Such types of investment in education and training could be one way to compensate for brain drain.

If remittances can support sustainable and productive activities for the benefice of communities, it may also be counterproductive when it is used to compensate failing state-run health and education systems; and it can represent a burden on migrants to meet the needs of their communities in areas where neither the public nor the private sector chooses to invest.\textsuperscript{17} Also, good governance and an enabling environment, ‘free of corruption’, is necessary in countries of origin to ensure that remittances can be invested in a sustainable manner.

While addressing these questions, the EU should avoid to put too much emphasis on the potential of Diasporas on development through their financial contribution. First, because remittances should not be seen as a substitute of Member States’ obligation to invest in the developing countries; secondly because migrants are actors of development also through the social remittances that they may share with their country of origin. An example is the social remittances that women migrants can bring to the promotion of women’s rights and gender equality in their country of origin.

\textsuperscript{13} CONCORD, Spotlight on policy coherence (2009), p.26. 
\textsuperscript{15} See page 8: \url{http://www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf} 
\textsuperscript{17} CONCORD, Spotlight on policy coherence (2009), p.22.
**Brain drain:** this is not so much an issue of large-scale emigration of highly qualified people from developing countries but the fact that a) this emigration can have severe consequences for staff needs in social sectors in the developing countries affected, and b) that sometimes this large-scale emigration is exacerbated by the EU to fill its needs. Emigration of qualified people from developing countries can become a ‘gain’ if the reintegration of qualified staff working abroad is made possible in the development strategies of the countries affected. Indeed, “brain drain” can generate a gain for countries of origin if migrants can return and either bring in enhanced qualifications or invest to create decent employment opportunities for others.

Not only should countries affected be supported to address their challenges in this regard, but also the EU should avoid exacerbating brain drain, by addressing specific labor needs both in Europe and in developing countries. This is a provision in the 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; however it remains to be seen how Member States will implement this provision.

In order to address the pull factor on the EU side, enhanced monitoring of the implementation of the WHO voluntary code of conduct on the recruitment of human resources in the health sector in developing countries is a first step. CONCORD has argued for the adoption of measures for the ethical recruitment of migrant workers from developing countries in key social sectors (not only the health sector, where the implications of brain drain are the most blatant, but also in sectors such as research, education, construction, entrepreneurship, or in other sectors according to the characteristic of the country). Good practices in the Member States should be systematically reported and their replication envisaged.

**Circular migration and labour mobility:** The concept of circular migration and its objectives is subject to divergent interpretations and should clarified; this Discussion Paper should be the place for the EC to provide a concrete definition of the concept, including a clear understanding of all its dimensions and objectives; a comparison analysis of the different interpretation between EU Member States should be a first step towards a common EU approach.

Circular migration opportunities were already envisaged in the Blue Card Directive (May 2009); however the transposition period for this Directive goes until 19 June 2011 and it remains to be seen how it will be implemented by MS. More importantly, this Directive does not provide the portability of social rights for migrants. Also, this Directive refers to the “application of mechanisms, guidelines and other tools to facilitate, as appropriate, circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly-skilled immigration on developing countries (...).” This demonstrates that the Council understands the concept of circular migration from a labor force management perspective; the development dimension seems absent.

*How does the European Commission envisage to “assist partner countries to provide appropriate job opportunities for migrants, and facilitate their reintegration in the labour market” (which instrument and budget)?*

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19 CONCORD, Spotlight on policy coherence (2009), p.37; example about the Netherlands (policy memorandum “Towards a modern migration policy” adopted in July 2008 and interministerial coordination practices).

20 An effort to develop a common EU definition of circular migration was made in the EC communication COM(2007) 248: “Circular migration can be defined as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries.”
Should such assistance be provided in the form of Official Development Assistance (ODA), the risk of misusing this aid for other purposes (control of migration flows) would be significant.

**Regional circular migration schemes:** the analysis of the contribution of South-South migration to development could be more elaborated in the Discussion Paper and in this paragraph in particular (see comments page 4).

Progress need to made on the recognition of the skills and qualifications between countries of origin and destination; this was already stressed by CONCORD (2009).21

*How does the Commission envisage promoting this further towards EU Member States?*

**Migrants’ rights:** As highlighted in the Discussion Paper, a common EU approach to strengthen the human rights of migrants is necessary (see remarks on page 2 in this submission).

*How will the SWP on Migration and Development help to build a common EU approach?*

A common EU approach on migrant’s rights should encompass equal treatment of migrants with EU citizens, the portability of social rights, collective bargaining, social protection and access to lifelong learning. These considerations have to be promoted through coherent EU internal and external policies as well as related binding instruments, including the ratification and implementation of ILO and UN migrant workers conventions (notably the ILO’s Decent Work Agenda, the UN 1990 convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, etc.) and their reflection in the EU GAM.

See also our comments (p.3-4) about the lack of gender mainstreaming in the analysis provided in the Discussion Paper and the absence of any reference to the Human rights frameworks related to women’s migrants.

On the particular issue of **vulnerable migrants** (p.5), the Discussion Paper does not provide a comprehensive definition of this category of migrants. Victims of trafficking and unaccompanied minors as well as women, but more generally all people displaced or forced to migrate, should be considered as vulnerable migrants, i.e. including climate-induced migrants, whose protection is yet to be defined in international humanitarian and human rights law.

Xenophobia and discrimination are factors that undermine social cohesion of hosting societies. In this regard, development education in hosting societies is a way to encourage a better understanding of the situation of migrants and their rights; budgets for development education in Europe and in developing countries should be further increased to include a component about the nexus between migration and development and migrants’ rights.

**“Cross-cutting principles”:**

**Coherence and capacity building:** “whole-of-government approaches” have never been clearly defined and the potential implications of such an approach have been raised by CONCORD in the recent past.22 On the contrary, migration policies need to be coherent with the development objectives of the EU and the development plans and strategies (PRSPs) of partner countries.

*What type of capacity-building does this paragraph refers to?*

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21 CONCORD, Spotlight on policy coherence (2009), p.22.
The issue of the *misuse of development aid* to serve European “interests”, including the control of migration flows, is not addressed in the Paper. CONCORD would assume that this is an issue important to be looked at closely by DG Development Cooperation. The objective of EU development aid is to address the root causes of poverty and promote sustainable development and human rights; it should not have conditionalities in bilateral and multilateral negotiations relating to migration control or re-admission of migrants. The EU and Member States should instead mainstream migration into their development strategies and programmes; as envisaged in the Discussion Paper (para. on brain drain p.4), aid could be used to support developing countries’ strategies to retain highly skilled workers, e.g. through development programmes aimed at improving local employment opportunities and working conditions, provided that the principles of Paris Declaration on Aid effectiveness of ownership and alignment on development strategies (PRSPs) are respected.