EXPLANATORY MEMORANDUM (EM) ON EUROPEAN UNION DOCUMENT


MAXIMISING THE DEVELOPMENT IMPACT OF MIGRATION: THE EU CONTRIBUTION FOR THE UN HIGH-LEVEL DIALOGUE AND NEXT STEPS TOWARDS BROADENING THE DEVELOPMENT-MIGRATION NEXUS

Submitted by the Home Office on 13 June 2013

SUBJECT MATTER

1. The next UN High Level Dialogue (HLD) on International Migration and Development will be held in New York from 3 to 4 October. The purpose of the HLD is to identify concrete measures to strengthen international coherence and cooperation on migration, with a view to enhancing the development benefits of international migration for migrants and for host and sending countries, while reducing the negative impacts.

2. This Communication proposes the “basis” for a common position of the EU and its Member States in relation to October’s HLD, including key messages to be delivered at the four round table discussions.

3. Migration is an area of shared competence between the EU and Member States (Articles 2(2) and 4 TFEU); international development is a parallel competence (Articles 4(3) and (4) TFEU). The coordinated EU response proposed by the Commission builds on the emphasis on migration and development under the EU’s Global Approach to Migration and Mobility (GAMM) and the Council Conclusions on the GAMM, which agree on the need for an ‘ambitious and forward-looking’ approach on migration and development at EU level, as well as the EU Agenda for Change, which provides the EU’s development policy framework, and which includes migration as a specific priority.

4. While primarily focused on the HLD, this Communication also sets out recommendations on deepened engagement with ‘the development-migration nexus’ by the EU and Member States within the context of the EU’s own policies and programmes.

SCRUTINY HISTORY

5. The Commission’s Communication on the Global Approach to Migration and Mobility (GAMM), document 17254/11, was deposited on 12
December 2011. This cleared the Commons on 11 January 2012, but remains subject to scrutiny in the Lords pending the completion of the ongoing Inquiry into the Global Approach to Migration and Mobility, on which a debate took place on 6 June.

6. DFID produced an EM on the Commission Communication ‘Increasing the Impact of EU Development Policy: An Agenda for Change’ (EM 15560/11), which was deposited on 28 October 2011. The EM cleared scrutiny in the House of Lords on 17 November and was cleared from the House of Commons on 20 June 2012. It was deemed politically relevant.

MINISTERIAL RESPONSIBILITY

7. The Home Secretary has overall responsibility for policy on migration. The Secretary of State for International Development and the Foreign Secretary also have an interest in the subject of this EM.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. The Devolved Administrations have been consulted in the preparation of this EM.

9. Although immigration policy is reserved to UK Government Ministers, the Devolved Administrations have an interest in areas such as immigration for economic purposes, integration of immigrants in host communities, action against human trafficking, and links made between migration and international development. Scotland, Northern Ireland and Wales have noted their interest while confirming that they are content with the EM.

LEGAL AND PROCEDURAL ISSUES

i) Legal basis
10. None. This is not a legislative proposal.

ii) European Parliament procedure
11. None for this Communication.

iii) Voting procedure in the Council
12. None for this Communication.

iv) Impact on United Kingdom Law
13. None - this Communication is not a legislative proposal.

v) Application to Gibraltar
14. None. However, the Government of Gibraltar will have an interest in this Communication.

vi) Fundamental Rights Analysis
15. As this is not a legislative proposal it will not have any impact on fundamental rights. However, the Commission Communication does acknowledge the importance of upholding the human rights of migrants
and refugees, in accordance with the international legal framework (including, for example, the ECHR and the 1951 Geneva Convention Relating to the Status of Refugees).

APPLICATION TO THE EUROPEAN ECONOMIC AREA

16. The Communication is not addressed to the EEA States.

SUBSIDIARITY

17. Subsidiarity is met because the document proposes a basis for a common position of the EU and its Member States in relation to October’s HLD; by definition, this could not be achieved by Member States acting alone.

POLICY IMPLICATIONS

18. I welcome the Commission’s contribution to preparation for this important UN dialogue. Many of the recommendations in the Commission’s Communication are welcome, although some are of concern or contrary to UK policy.

19. It is also important to note that the Communication has been produced solely by the Commission. On this basis, the Government considers it helpful that the Council will set out its view in separate Council Conclusions on the HLD, proposed by the Irish Presidency following publication of the Commission’s Communication, which will provide an opportunity to ensure Member States’ competence in this area is reflected in the EU’s final position on the HLD. The Council Conclusions will be agreed by consensus.

20. The principal focus of the Communication is the Commission’s analysis and recommendations on key messages for the four HLD ‘roundtables’ proposed by the UN Secretary General.

21. Roundtable 1 will focus on the links between migration and development, and their importance for the post-2015 development framework. The Commission’s proposals for ‘key messages’ for this session include recognising migration and mobility as ‘enabling factors’ for development, introducing these into the post-2015 development framework, and broadening the migration and development agenda to recognise the ‘growing importance of migratory flows within and between developing countries’ and the positive and negative links between these flows and economic and social development.

22. The Government welcomes the proposal that the migration and development agenda should be broadened to recognise flows beyond the ‘South-North’ flows that often dominate discussions in international fora. The overwhelming majority of migration in the world is internal or within the South. Broadening the focus of the migration and development agenda would better recognise the importance of migration to the lives of many people or households within the South, and the greater economic and
other benefits that safe, legal and well-managed migration can bring in contrast to illegal or mismanaged migration.

23. I also welcome the Communication’s emphasis on well-managed migration and mobility, and the acknowledgement of the challenges as well as benefits of migration and mobility for development. Mismanaged migration is not only detrimental to countries of origin, but also to destination countries and to migrants themselves.

24. With regard to the Communication’s consideration of links between the migration and development agenda and the situation of refugees, the Government believes that it is important for all States to operate effective asylum systems, identifying and providing protection to refugees, and ensuring that those making unfounded claims are removed. However, we accept that it is also useful to consider how the ‘human capital’ of refugees might better be engaged with regard to social and economic development.

25. The Post-2015 development agenda is of particular interest to the UK Government, especially given the Prime Minister’s role as a co-chair of the High Level Panel on post-2015, along with the Presidents of Indonesia and Liberia. We envisage that there will be discussion at the HLP on whether migration and development should feature in some way in the Post-2015 development agenda. However, the Government believes the Commission’s Communication is premature in calling for the introduction of migration and mobility as a ‘visible cross-cutting priority’ in the Post-2015 development framework.

26. Roundtable 2 will focus on the human rights of migrants, orderly, regular and safe migration, and human trafficking and smuggling of migrants. The Commission proposes several key messages, including on the importance of safeguarding the fundamental and human rights of migrants, regardless of legal status; the need to ratify and implement international instruments on smuggling and trafficking in human beings; and on providing potential migrants with information about immigration procedures and their rights.

27. The Government welcomes the Communication’s emphasis on global efforts to fight smuggling and combat trafficking in human beings, as well as providing potential migrants with information about immigration, not least as such communications can be an effective means of discouraging those who might otherwise place themselves at risk.

28. However, the Government is concerned with the repeated references to ‘migrants’ rights’ with regard to this roundtable. Whilst recognising the importance of protecting the human rights of migrants, in particular those most vulnerable to exploitation and abuse, the Government does not support the notion that migrants possess specific fundamental rights as migrants. On this basis, I am also concerned about the Commission’s suggestion that there may be scope to work towards ‘a new convention that addresses the rights of all migrant workers’. 
29. **Roundtable 3** will focus on international partnerships and cooperation, integrating migration into development policies, and multilateral coherence in migration governance. The Commission's proposed key messages in this area relate to international dialogue and cooperation to strengthen migration governance, integration of migration and mobility issues into development policies and instruments, enhancing the knowledge base on the benefits migration can bring to development, and minimising duplication between international organisations and other actors with regard to the international migration agenda.

30. The Government broadly welcomes the efforts the EU is already undertaking to better integrate migration into development policies, including the focus on migration and development as one of the four key areas of the GAMM.

31. Although the Government does not support more formal ties between the two fora, the Communication's proposal that the HLD take account of the discussions of the Global Forum on Migration and Development (GFMD) is sensible, given that the GFMD is the only international vehicle that allows States to come together to discuss issues of common interest in relation to managing the relationship between migration and international development.

32. **Roundtable 4** will focus on labour mobility. The key messages proposed by the Commission include a focus on removing barriers to mobility (in particular those hindering economic competitiveness and regional integration), promoting well-managed intra-regional migration and mobility between developing countries, and promoting access to social security in host countries and portability of social and pension benefits.

33. While we recognise the importance of enhanced mobility for developing countries as a means of furthering their economic and social development, many of the Commission's proposed 'key messages' are unacceptable, at least in their current form.

34. With regards to removing barriers to human mobility, our view is that States require the ability to control inflows and prevent abuse of migration routes. Some degree of restriction on mobility is a necessary corollary of the orderly management of access to labour markets, and the effective administration of work permits would be more difficult if, for example, those admitted as visitors were at liberty actively to seek work.

35. On the portability of social and pension benefits, the Government has frequently said that social security rights for third country nationals should not be extended. However, the UK already pays certain contributory benefits (such as state pension) worldwide as a matter of domestic policy, where a person has paid their contributions and become entitled. We also have no objection to portability being handled through bilateral or regional agreements where countries are free to decide whether or not they participate. However, we do not believe that it should be a 'key message'
to the HLD that the portability of social and pension rights should be promoted.

36. Following its proposals on the HLD, the Communication concludes with non-binding recommendations for further action that could be taken by the EU and Member States to engage better with the relationship between migration and development.

37. The Commission's recommendations are focused on taking further steps towards comprehensive EU action on migration and development, including extending action to the 'South-South' context; reducing costs and increasing benefits of migration to low and middle-income countries; deepening understanding of social and economic consequences of migration; further integrating forced migration (i.e. refugees) into the migration and development agenda; further exploring the migratory impacts of climate change and environmental degradation; and further exploring the links between mobility and development.

38. The Commission also propose promotion of migration governance and effective policy coherence under the GAMM and the Agenda for Change, harnessing migration and mobility as ‘development enablers’, including through ‘mainstreaming’ migration in development strategies, and strengthening migration governance and cooperation in and between developing countries.

39. Lastly, the Commission calls on the UN system to show leadership in the field of migration and development, on development policy makers and practitioners to engage better with the links between migration and development, and on migration policy makers and practitioners to improve their engagement with the human rights of migrants.

40. In broad terms, I believe that these concluding sections provide a useful stimulus for further debate on enhancing the migration and development agenda within the EU, in particular under the GAMM. However, it will be important as the debate moves forward that any initiatives in the field of migration and development are compatible with international commitments on aid effectiveness, and likely to bring lasting benefits to the lives of people in extreme poverty or need in developing countries. Where appropriate, development specialists need to lead this work, and it is important that this work be grounded in an approach based on evidence rather than led by assumptions.

41. It is also vital that future EU initiatives in this area respect Member States' requirements for well-managed migration and their competence in this regard. On that basis, it is of concern that the Commission is using this Communication, published without prior consultation with Member States, to call on policy makers, agencies and international organisations to take further action, albeit that this language builds on earlier Council Conclusions on the GAMM. For that reason, I look forward to the
opportunity to set out the position of the Council on the Commission's proposals in forthcoming Council Conclusions.

**IMPACT ASSESSMENT**

42. Not applicable.

**FINANCIAL IMPLICATIONS**

43. There are no direct financial implications following from this Communication.

**CONSULTATION**

44. Inter-departmental consultation has taken place with the Foreign and Commonwealth Office, the Department for International Development and the Department for Work and Pensions.

**TIMETABLE**

45. Following an initial item on the HLD at the JHA Council on 7 June, the Irish Presidency has committed to Council Conclusions on a common position of the EU and its Member States on the HLD. These are most likely to be agreed in July under the incoming Lithuanian Presidency.

Mark Harper MP
MINISTER OF STATE FOR IMMIGRATION
HOME OFFICE
UNION OF THE COMMISSIONS

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H. M. W. N. W.

MINISTER OF STATE FOR IMMIGRATION
HOME OFFICE