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NOTE

from : Presidency

to : Migration and Development Cooperation Working Parties

Subject: Migration and Development

*The Presidency submits the enclosed discussion paper for consideration by the Joint Migration and Development Co-operation Working Parties. The paper has been discussed during the Informal Development Co-operation Council, which took place in Amsterdam from 28 February to 2 March 1997. This discussion will have a follow-up through a Resolution to be adopted by the Development Co-operation Council at its meeting on 4 June 1997. As was stated in the conclusions of the Development Council of 28 May 1996, the Commission is invited to convene an expert meeting in the area of migration and development. The Presidency intends to devote the Joint Meeting of the Working Parties to formulating an input to be used by the Commission in preparing the above-mentioned expert meeting. It therefore invites delegations to reflect upon the precise issues that could usefully be discussed by the expert group concerning the relationship between migration and development policies. In this regard, the Presidency draws particular attention to the themes mentioned in the section "Possible solutions", paragraphs 1 and 3.

Coherence

discussion papers drawn up by
the Netherlands Presidency
for the Informal Development Cooperation Council

Amsterdam, 28 February - 2 March 1997

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Introduction

General

The establishment of the Maastricht Treaty has given the European Union a legal foundation for pursuing consistent economic and external policies that take account of the interests of developing countries. In practice, however, it turns out that there is little systematic weighing of interests; indeed, the procedures for doing so have not been devised. As a result, development cooperation policy amounts to no more than measures to alleviate or offset the negative effects of other European policies. Nor, on balance, does it make any positive contribution towards realising the development cooperation objectives of the European Union.

Background

Development cooperation was incorporated in the EC Treaty partly in recognition of the fact that such policy can only be effective if it enjoys equal status with relevant internal and external policies which also have consequences for developing countries. Its upgrading to the status of Community policy could moreover contribute to the unity and coherence of the Union's external action, which is, after all, the objective of the Treaty.

Legal basis

The provisions on development cooperation contained in the EC Treaty (Articles 130 U to Y inclusive) refer to three principles for ensuring that Community aid attains the desired level of effectiveness: complementarity, coordination and coherence. The first two make it possible in theory for the Community and its

Member States to pursue a broadly consistent policy that is implemented as efficiently as possible.

Article 130 V of the EC Treaty obliges the Community to take account of the objectives referred to in Article 130 U in the policies that it implements which are likely to affect developing countries (coherence). Legally speaking, this obligation applies only to the policy of the Community, e.g. the common commercial, agricultural and fisheries policies and to policy on the internal market. It does not extend to intergovernmental policy areas in the second and third pillars of the EU Treaty (i.e. the Common Foreign and Security Policy and cooperation in the fields of justice and home affairs). Article C of the Treaty, which obliges the Union to ensure the coherence of policy in the various pillars, provides grounds for arguing that the need for coherence ought to extend to external policy in its entirety: the Union must ensure the coherence of its external activities as a whole in the context of its external relations, security, economic and development policies.

In addition to its general role as guardian of the Treaties, the Commission is entitled under Article 130 X of the EC Treaty to take any initiative to promote the coordination (referred to in paragraph 1). Furthermore, under Article C it shares with the Council the responsibility for ensuring the coherence of the EC/EU's external policy.

The Treaty therefore provides a concrete basis for taking measures specifically aimed at performing some kind of assessment of its economic and external policies in order to determine their consequences for developing countries.

Legal/policy consequences

At a meeting which took place in November 1992, the Council explicitly acknowledged the "linkage" between development policy and other Community policies. It also recognised the need to render account for the effects of such

policies on developing countries. At the same time, the Council urged the Commission to find a more systematic way of detecting these effects.

The first explicit mention of the term coherence was made by the Commission itself. An internal Commission communication from 1994 concerning subsidies for beef exports to West Africa expressly concluded that there was a serious lack of coherence in this area. The communication stated that this was unacceptable, since the term coherence was explicitly mentioned in the Treaty. As is well known, the Commission subsequently took measures to rectify the situation.

In an internal working document on coherence, also dating from 1994, the Commission concluded that the policy areas best suited to an evaluation aimed at determining policy consistency were those which affect trade and investment flows and knowhow transfers. For practical reasons, attention must focus primarily on new policy. The Commission took the view that a methodology on coherence would ultimately have to be developed.

Although both the Council and the Commission went some way towards fleshing out the concept of coherence, especially in the early days, its application on a routine basis is felt to be less than satisfactory.

Possible solutions

The absence thus far of active steps to give effect to the principle of coherence raises the question of how this can actually be done. Within the existing Treaty framework, which is adequate, there are two conceivable options: an "internal" option, oriented towards the Commission itself, and an external option, whereby the Commission is influenced from outside. The two options, which are not mutually exclusive, are as follows:

- the Commission could be requested to make full use of its role as guardian of the Treaties and of its right of initiative in this area by automatically presenting, in the relevant Council framework(s), any coherence questions that arise or are foreseen. It could submit them in the form of a (confidential) advisory opinion stating why it has carried out an assessment based in part on the positions which the Member States may have already adopted with regard to the policy issues in question. Both options necessitate the availability within the Commission of adequate identification and coordination mechanisms.

- Consideration could be given to a complaints procedure for third parties (NGOs or other affected parties). The procedure could be established at the Commission or at the European Parliament. The advantage in making it a Commission procedure is that, unlike the EP, the Commission itself is able to put inconsistencies on the agenda and, where appropriate, make proposals for eliminating them to the Council. On the other hand, the advantage in making the procedure an EP procedure is that the Parliament can call the Commission to account if it fails to act.

Needless to say, neither option precludes the Council from acknowledging its own responsibility for either preventing or eliminating the most glaring examples of inconsistency by means of targeted agenda management on the part of the Member States themselves, both at national level and in Brussels.

Analysis

Migration is a phenomenon which takes place mainly within and between developing countries and which has consequences for the development process. The obverse is also true: development - and the absence of development - may have consequences for the movement of people. That includes migration to the EU.

The migration policies of most individual EU Member States, and the policy of the EU as a whole, are concerned solely with asylum and immigration. The restrictive entry policies which the Member States apply to non-EU countries and the measures taken to step up cooperation between the Member States to counter improper forms of migration has consequences for the countries of origin and possibly for the development process. Firstly, the scope for migrants to remit money to help their families and thereby indirectly support the local economy is limited. Secondly, countries of origin, particularly those which were previously the scene of conflict, are confronted with large numbers of returnees, mainly from the region of origin.

Defining the problem

- the priority areas as regards migration and development have not yet been fleshed out into a coherent set of measures designed to reduce migration pressure by means of sustainable development;
- there is still no cooperation between the EU pillars in the area of migration and development, which may mean that development cooperation resources are being deployed to less than full effect.

Possible solutions

As far as migration and development are concerned, the Presidency could take a number of initial moves towards resolving the problems pinpointed above by pursuing the following objectives:

1. Follow-up by the Commission to the conclusions reached at the Development Cooperation Council of 28 May 1996 in the area of migration and development

The group of experts to be convened by the Commission could be given the task of drafting a Commission document operationalising the relationship between migration and development at micro level. This could be done in two ways: by focusing on one or more relevant regions of origin and by concentrating on specific themes which may be relevant from the point of view of development cooperation and policy consistency. The group of experts to be convened for this purpose should comprise experts from the relevant bodies under the various pillars. Consideration could be given to such themes as: employment and income problems in migrants' countries of origin; the "brain drain" aspect of migration; the transition from internal migration (generally from the countryside to the cities) to international migration; the relationship between population growth and migration; migration and the position of women; regional reception of asylumseekers/displaced persons; the role of remittances (payments made by those who have emigrated legally or illegally to their countries of origin); the role which development cooperation can play in encouraging voluntary return.

Countries and regions could be selected in consultation between the relevant fora of the three EU pillars (see 2).

2. The promotion of cooperation between the EU pillars in the area of migration and development with a view to pursuing a consistent policy towards developing countries

As far as the Union is concerned, this means that cooperation has to be initiated between the Working Party on Development Cooperation and the JHA pillar's Working Party on Migration and Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration.

Opportunities for exploring the relationship between migration and development further in the context of planned activities are provided by:

- a. The dialogue on possible ways of curbing South-North immigration provided for by the Barcelona Declaration, which stresses the need for cooperation to combat illegal immigration.
- b. Joint EU-US preparations for the June 1997 follow-up seminar (in Washington D.C.) on South-North migration pressure, to be held in the framework of the Transatlantic dialogue. This meeting is a follow-up to the seminar held jointly by the Commission (JHA) and the US on 2 and 3 December 1996 in Dublin. Although the US is entirely responsible for the follow-up seminar, it has indicated that it would greatly appreciate any suggestions from the EU regarding its structure and content.

3. Elaboration by the Commission of a programme of support for countries of origin to facilitate the voluntary return of migrants

The Council could discuss the advisability of requesting the Commission - as a consequence of the Conclusion of 28 May 1996 (point 5.h) and as a contribution towards a consistent EU policy on migration - to ensure that a general return programme consisting of support for countries of origin is

worked out with a view to facilitating the voluntary return of migrants residing in EU Member States. This category would also include illegal immigrants and asylumseekers whose applications have been rejected. The Council could also ask whether the programme would relate solely to voluntary return or could also cover compulsory return. Needless to say, this would not prejudice the possibility of invoking the readmission clause contained in cooperation agreements in respect of such migrants. The offer of support would be conditional upon acceptance by the authorities of the principle that they are obliged to readmit their own nationals, including those who do not cooperate.

Support could be provided to the countries of origin at various levels:

- general support to the developing country in question to promote post-conflict reconstruction. Also of relevance here is the willingness of the government concerned to cooperate in return programmes;
- programme aid for countries to enable them to cope with the reception/return of refugees from the region, e.g. neighbouring countries;
- programme aid to provide training, reception facilities, accommodation, employment, etc for returnees. This type of support is not geared to individual needs but is intended to benefit both the returnees and the population already living in the region.