

OUTSPENDING ON MIGRATION?

ECRE'S ANALYSIS AND RECOMMENDATIONS ON FUNDING FOR MIGRATION OUTSIDE THE EU TO INFORM THE NEGOTIATIONS OF THE NEXT EU MULTI-ANNUAL FINANCIAL FRAMEWORK 2021-2027

I. INTRODUCTION

In the negotiations of the upcoming Multiannual Financial Framework (MFF) 2012-27 there are some persisting disagreements between Member States on the overall architecture and governance of the EU's future seven year budget. Some relate to asylum and migration: how much money will be provided for migration-related objectives? For what specifically? To be spent where? And under whose competence?

In particular, Member States are divided over the way in which migration should feature in the Neighbourhood, Development and International Cooperation Instrument (NDICI), to what extent Justice and Home Affairs (JHA) funds should cover migration related spending outside the EU and what coordination between internal and external funding for migration should exist. The background against which this is discussed is that Member States have agreed to follow the European Commission's proposal to dedicate 10% of the NDICI to "addressing the root causes of irregular migration and forced displacement and to supporting migration management and governance including the protection of refugees and migrants' rights". In addition, the concept of dedicated, significant components for external migration management has been introduced as a feature for all three Justice and Home Affairs Funds, the proposed Asylum and Migration Fund (AMF), the Integrated Border Management Fund (IBMF) and the Internal Security Fund (ISF).

It is expected that this will be discussed by Heads of State and Government in the coming months. This Policy Note seeks to inform discussions by providing a perspective on what would constitute the most effective and rights based approach to funding asylum and migration outside the EU.

II. ANALYSIS

DISPLACEMENT AND MIGRATION WITHIN THE NDICI

Member States have agreed to dedicate 10% of NDICI to migration, which based on the currently proposed total amount, constitutes 8.9 billion euro. In addition, the emerging challenges and priorities cushion to which currently 10.2 billion euro is allocated may be used to address “migratory pressure”. The prominence of migration within NDICI is a reflection of the EU’s priority to ‘tackle’ migration, the success of which is largely assessed by a decreased number of people seeking asylum or a better future in Europe. This is despite the fact that the link between migration, mobility and development is complex and that the suggestion of more development (supported by financial aid or technical assistance) would lead to less migration or mobility remains contested. Migration related external spending should therefore focus on the needs resulting from forced displacement.

The communication “Lives in Dignity: from Aid-dependence to Self-reliance” provides a conceptual framework that focuses on preventing forced displacement from becoming protracted and on reducing the dependence on humanitarian assistance in situations of displacement. The need and related absorption capacity in this area is illustrated by spending over the past three years under the Joint Valletta Action Plan (JVAP). The first domain (development benefits of migration and addressing root causes of irregular migration and forced displacement) and third domain (protection and asylum) have constituted the bulk of spending with an estimated 80% of funding going to these two domains, and over 50% spent in the first one. Funding those two domains is also in line with the EU’s commitment to the Global Compact on Refugees (GCR), the implementation of which should be supported by the NDICI and be considered a contribution to the 10%.

If Member States make a more specific reference to migration management, this should be based on the Global Compact for Safe, Regular and Orderly Migration (GCM) and the Sustainable Development Goals, more particularly SDG 10.7 which aims to “facilitate orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies”. Regarding legal migration and mobility, support to establishing regular pathways and mobility in third countries and to Europe should be covered by NDICI. Given that the suggested AMF has dedicated resources in EU Member States’ national programmes to returns from Europe, only reintegration support in third countries should be covered by NDICI.

The suggested 10% earmarking for migration will already lead to the allocation of a significant amount of the EU’s development budget to issues related to displacement and migration. It should therefore be an indicative maximum earmark. A higher threshold of funding dedicated to migration would tie the hands of the European Commission and risks ineffective spending.

EFFECTIVENESS AND FLEXIBILITY OF NDICI

Several Member States have expressed support for strengthening flexibility within EU external funding. The possibility to establish Trust Funds, similar to the Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa (EUTF for Africa) in the next MFF is considered another way to contribute to flexibility. However, evaluations of the EUTF show a rather more nuanced picture. The European Court of Auditors found that while the signing of contracts was sped up under the EUTF for Africa, projects eventually faced challenges that slowed down their implementation similar to other EU funding streams.

In addition, the flexibility desired by the EU risks undermining principles that should guide development cooperation, such as the Busan Commitments which proscribe ownership of development priorities by developing countries. Member States desire for flexibility challenges the predictability and long-term engagement that set EU funding apart from Member States funding and made the EU a reliable and trusted partner in development. This is pertinent to how priorities are defined but also how programmes are delivered. The Constitutive Agreement of the EUTF for Africa identifies delegated cooperation with EU Member States agencies as the main implementation modality. This has resulted in a situation where at the end of 2018, 42% of EU Trust Fund funding was going to EU Member State agencies, which undermines ownership of third countries and may even be implemented in parallel to existing cooperation structures.

The current proposal already introduces enough flexibility so no additional measures to increase flexibility within NDICI should be taken. The proposed emerging challenges and priority cushion, which constitutes 11% of NDICI is flexible enough to also, when relevant, be used to address migration if a change in dynamics would risk instability, conflict or undermine resilience of states. However, in line with the Busan Commitments, this should be based on the third country assessments of priorities as opposed to the EU’s. Member States who are committed to effective and flexible EU external action should defend the EU’s external and development budget, which in past MFF negotiations received the largest cuts proportionally to the initial proposal by the European Commission.

SPENDING JHA FUNDS OUTSIDE THE EU

The MFF proposal foresees a significant increase in the amount of money dedicated to migration and border management as part of the Justice and Home Affairs funds. As the negotiations will most likely lead to a decrease of the overall MFF budget as well as a reshuffling of amounts across and within different headings, EU leaders should preserve the resources allocated to the AMF.

With adequate resources, the AMF can play a considerable role in ensuring fair and effective asylum systems in Europe, dignity in returns of third country nationals and contribute to the harmonization of standards in relation to asylum, reception conditions and integration. Adequate flexibility and robust emergency assistance mechanisms will also allow timely responses to future crises. Support to third countries under the AMF and the suggested dedicated, significant components for external migration management must remain limited and inherently linked to the internal dimension of the Common European Asylum System (CEAS). The actions should be comprehensively defined under the relevant Annexes of the proposed Regulation. Diverting a substantial portion of the funds outside the EU risks justifying continued substandard asylum systems and poor integration services. This might also fuel subsequent irregular secondary movements in Europe. As the current proposal already allows Member States to spend a significant amount of funding on return within their national programmes, this should not be covered by the suggested funding for the external dimension.

The same argument holds true when considering the spending of IBMF funds outside Europe. The link to the objective of the fund to ensure “strong and effective European integrated border management at the external borders while safeguarding the free movement of persons within it” must be made clear for all activities outside the EU. Examples of this could include cross border cooperation on integrated border management, training on components of integrated border management, including international human rights and refugee law, border monitoring and search and rescue.

In line with the European Parliament, ECRE proposes the introduction of a maximum allocation requirement of 5% of AMF and 4% of IBMF for funding spent outside the EU. Without a cap, there is a risk that JHA funds will be diverted outside of Europe, jeopardising the EU and Member States pursuit of the CEAS and integrated border management objectives. In addition, increased JHA spending outside may result in a parallel foreign policy developed, implemented and managed by DG Home and Ministries of Interior which undermines the EU’s objective of a comprehensive approach to conflict and crisis as reiterated in the Global Strategy for the EU’s Foreign and Security Policy. External spending should be limited to the thematic facility and exclude Member States from spending the funding allocated to asylum systems and integrated border management capacities outside Europe.

INCREASING HUMAN RIGHTS COMPLIANCE AND MONITORING OF FUNDING

It must be ensured that actions in or in relation to a third country fully respect the rights and principles enshrined in the Charter of Fundamental Rights of the European Union and the international obligations of the Union and the Member States. The EU otherwise runs the risk of becoming complicit in human rights violations. The mid-term review of the Internal Security Fund - Borders and Visa (ISF) found that it was not supporting Member States to apply the non-refoulement principle, the most likely and significant human rights violation a fund supporting border management could contribute to.

Requiring the involvement of the Fundamental Rights Agency in setting up funding arrangements outside the EU and contributing to monitoring of implementation should be considered. Oversight of border control activities to assess their compliance with international refugee and human rights law, commonly known as border monitoring, is a fundamental component of rights-compliant migration management systems. Ensuring civil society has access to IBMF funding and is supported to participate in border monitoring programmes is important. In addition, given current experience with ISF Borders and Visa, the ensuing collection of data on funding outside the EU and impact assessment needs to be improved.

ALLOCATION OF FUNDING TO MEMBER STATES AND MID-TERM REVIEW

As part of effective implementation of EU funding, it also has to be ensured that EU resources are allocated according to needs. The suggested formula for allocation of resources to Member States national programmes under Annex I of the AMF proposal risks skewing funds according to numbers of return decisions and affected returns. This risks that certain Member States maintain a poor standard of asylum and integration services. As EU leaders will discuss weighting and indicators as part of the overall negotiations, they should replace the suggested weighting of indicators with a mechanism that bases the allocation of funding to the programmes under shared management on objective indicators such as the ones listed under Annex I of the proposed

regulation. For the IMBF, the number of people arriving at a country's border wishing to claim asylum should be added to the suggested formula for the calculation of the workload in Annex I to ensure that those Member States who receive a significant amount of asylum requests at the border are supported to respond to them.

Adjusting the allocation of funds to the actual needs of Member States could also be achieved by combining both a quantitative and a qualitative analysis of Member States performance under the AMF and IMBF mid-term review instead of focusing only on the degree of under-spending. As suggested by certain Member States, the allocation of the second tranche of funding should be based on a detailed assessment of the implementation of the funds and an updated assessment of needs. In the case of the IMBF and AMF, this should take into consideration the results of the Schengen evaluation. When there is an obvious lack of political will to implement national programmes or when there is a lack of absorption capacities, the mid-term review should also allow the European Commission to reabsorb part of the second tranche under the thematic facilities.

III. RECOMMENDATIONS

On the NDICI, Member States should:

- » Agree 10% spending on migration as an indicative maximum earmark.
- » Affirm the communication "Lives in Dignity: from Aid-dependence to Self-reliance" as the conceptual framework that guides migration related spending outside the EU, alongside the GCR and the GCM. Commit to implementing the NDICI, including the suggested maximum earmarked spending on migration in line with the Busan Commitments and the SDGs.
- » Refrain from including additional mechanisms to enhance flexibility which would undermine the EU's reputation as a principled donor and reliable development partner.
- » Commit to the current allocation of EU budget to external action and defend it from cuts during the MFF negotiations.

On the AMF, Member States should:

- » Agree on a 5% cap for external spending of AMF and limit it to funding under the thematic facility
- » Clarify that dedicated, significant components for external migration management must be limited and inherently linked to the internal dimension of the CEAS such as resettlement, protection pathways, legal migration and return.
- » Revise the suggested criteria for the allocation of funding to the programmes under shared management so that they do not incentivize return decisions and forced returns or reward Member States who have lower than EU average asylum recognition rates.
- » Decide to combine quantitative and qualitative analysis for the mid-term review of the fund and base allocation of second tranche on detailed assessment of the implementation of the funds, an updated need analysis and where possible the respective Schengen evaluation.
- » Commit to the current allocation of EU budget to the AMF and defend it from cuts during the MFF negotiations.

On the IMBF, Member States should:

- » Agree on a 4% cap for external spending of IMBF and limit it to funding under the thematic facility.
- » Clarify that dedicated, significant components for external migration management must be inherently related to the establishment of European integrated border management at the external borders such as cross border cooperation on integrated border management, training on components of integrated border management, including international human rights and refugee law and search and rescue.
- » Ensure that civil society organisations participate in the preparation, implementation, and monitoring of the fund in particular in relation to border monitoring.
- » Add an indicator for the number of persons having submitted an application for international protection which should be weighted 20% in Annex I for the purpose of calculating the workload of Member States.
- » Decide to combine quantitative and qualitative analysis for the mid-term review of the fund and base allocation of second tranche on detailed assessment of the implementation of the funds, an updated needs analysis, and, where possible, the respective Schengen evaluation.

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