

THE PRICE OF RIGHTS: ASYLUM AND EU INTERNAL FUNDING

**ECRE'S PRELIMINARY ANALYSIS OF THE EUROPEAN COMMISSION'S
PROPOSAL FOR THE EU MULTI-ANNUAL FINANCIAL FRAMEWORK
2021-2027: FUNDING WITHIN THE EU AND AT ITS BORDERS.**

I. INTRODUCTION

The upcoming negotiations on the EU's funding architecture after 2020 promise to be challenging. They take place against the backdrop of Brexit, division between the Member States about the desirability of deeper integration, and worrying political developments in some Member States that undermine the EU's founding principles. A lot is at stake for asylum-seekers, refugees and migrants inside and outside Europe in the next Multi Annual Financial Framework (MFF), the EU's seven-year budget, 2021-2027. Negotiations will concern the overall budget, the division among policy areas (headings), and the details of individual funding programmes set out in legal instruments. This policy note is ECRE's preliminary analysis of the overall European Commission proposal that was published in early May 2018 and its implications for refugee rights inside the EU and at its borders. A more detailed assessment will be provided once the draft legislative instruments are available.

II. ANALYSIS

THE NEXT MFF AS A VEHICLE FOR PROMOTION OF THE RIGHTS OF DISPLACED PEOPLE, REFUGEES AND MIGRANTS

The number of people forcibly displaced is higher than at any point since the end of the Second World War and while the vast majority of them live outside Europe, the EU cannot isolate itself from this crisis. If it adopts a positive approach to the MFF based on protecting the rights of people on the move, including in Europe, the EU could live up to its responsibility to uphold and promote international standards.

One issue that needs to be addressed is the shrinking space for civil society organisations in Europe, including those working on the rights of those on the move. Although legal actions are also required to tackle civil society repression, through its funding the EU has the power to influence the situation. A report by the

Fundamental Rights Agency published in early 2018 identifies multiple challenges to civil society in Europe, ranging from bureaucratic impediments to attacks and harassment. Activists and organisations working with and for refugees and migrants are often specifically targeted, and organisations led by refugees and migrants themselves may be particularly vulnerable. This is at a time when rights of refugees and migrants are under threat in Europe, with the increased practice of detaining people seeking asylum being but one example. Thus while civil society is under attack its work is more needed than ever.

The need to support human rights defenders and organisations working on the rights of asylum seekers, internally displaced person, and migrants, as well as countering xenophobia, is a priority for the EU's external funding in the European Instrument for Democracy and Human Rights (EIDHR). A similar funding instrument to support civil society inside the EU is sorely missing. When the European Endowment for Democracy (EED) was established in 2011 during the Polish Presidency of the Council of the EU, the opportunity to support civil society inside the EU was not seized. Since that time there has been a dramatic deterioration of the situation in Europe. The proposed Justice, Rights and Values Fund can address this by ensuring that it explicitly funds individuals and organisations that support human rights in Europe without requiring the approval of the respective government.

It is also important to remove burdensome requirements and administrative obstacles which can prevent the civil society organisations from accessing EU funding, especially refugee-led organisations which are often smaller and rely on volunteers but have the skills and access to communities needed. The simplification of EU funding rules due to be announced is a welcome development that will allow some improvement in the effectiveness of EU funding by helping ensure that funds go to those best placed to achieve results. Following negotiations between the Institutions the changes are not as extensive as they need to be, however.

The link between the provision of EU funds to Member States and their respect for rule of law and the rights enshrined in the EU Treaties has to be strengthened. The suggested regulation on the protection of the Union's budget in case of deficiencies as regards the rule of law in Member States is welcome but the current proposal focuses too narrowly on risks to sound financial management and on the protection of the financial interest of the EU. These factors are very important but the instrument should not neglect the danger of EU funds supporting governments which undermine democracy, human rights and solidarity as this poses a risk to the EU's functioning and reputation.

SUPPORTING FAIR AND HUMANE ASYLUM SYSTEMS IN THE EU AND ENSURING REGULAR MIGRATION

Although EU funding is supposed to supplement and not replace Member States own resources, the EU can play a significant role in supporting the establishment of fair and humane asylum systems in its Member States. In ECRE's view, the lack of harmonisation, implementation and compliance with standards in EU and international law are among the major problems for the asylum system in Europe, as well as being the main reasons for the recent crisis. The proposed Asylum and Migration Fund (AMF) with a suggested budget of more than three times the current Asylum, Migration and Integration Fund (AMIF), should be used to build functioning asylum systems in Europe.

To do this, it needs to address the current disparities in spending levels on asylum, integration and return, which undermines the effectiveness of AMIF. Recent ECRE and UNHCR research into the AMIF has shown that the current funding modalities allow for a situation where EU Member States continue to have inhumane reception conditions, inadequate asylum systems, and fail to support inclusion of refugees despite EU funding being available. As of September 2017, 20 Member States had received and thus requested less than 40% of the AMIF funding allocated to their national programmes. In turn, others appear to disproportionately spend on certain AMIF priorities (although the complete figures on actual spending are not yet available). In addition to the minimum allocation requirements, there need to be minimum spending requirements for asylum actions so that spending follows allocation. This is also the case for legal migration, which, while mentioned in the Annex to the European Commission's Communication on the post-2020 MFF as one of the objectives of the new AMF, is not expanded upon in the Commission's proposal.

Evidence shows that the interpretation and application of the partnership principle and involvement of non-governmental partners in the implementation of AMIF has been inconsistent, meaning that civil society and international organisations have not always been able to support and shape the operation of AMIF. To ensure the most appropriate use of AMIF funding, the partnership principle should be a compulsory part of national programmes and minimum percentages of programme funding to civil society organisations should be included in the asylum priority.

SUPPORTING INCLUSIVE SOCIETIES IN EUROPE

The European Commission proposal suggests moving the integration priority that is currently within AMIF to the European Social Fund+ (ESF+) and the European Regional Development Fund (ERDF). This has positive and negative implications. First, it is an opportunity to position integration of refugees within the broader framework of building more inclusive societies. Such an approach is lacking when European societies are portrayed inaccurately as monolithic and homogenous societies “forced” to absorb newcomers who, in turn, have to pass specific hurdles in order to integrate. Having DG Employment, Social Affairs and Inclusion overseeing this area of work could also contribute to a more holistic approach to integration in the form of closer links to access to employment, housing, social services and the broader non-discrimination agenda. This should be accompanied by involving people seeking asylum, refugees and migrants in formulating and implementing policies. Closer ties between integration and regional policy could result in more direct EU support for cities and regions which have generally demonstrated a more realistic and inclusive approach to international protection than central governments.

There are also risks attached to de-coupling integration from the broader context of asylum and migration however. The EU’s asylum and migration policies as supported by AMIF (in the future by AMF) have a significant impact on the way in which refugees are able to rebuild their lives in European societies. Inhumane reception conditions, untransparent asylum processes, and restrictions on refugee rights, such as limitation of freedom of movement or denial of family reunion rights have a significant detrimental impact on integration outcomes. Making different Commission DGs responsible for integration on the one hand and migration and asylum policy on the other, and creating separate funding instruments could exacerbate the situation where a restrictive and punitive legal and political framework undermines integration efforts. Monitoring of the positive and negative impact of law and policies and a commitment by both DGs to capitalise on the former and address the latter, will be needed.

Given the number of people who have arrived in Europe and would benefit from integration support, there needs to be a significant increase in the money available for integration which should be commensurate with the proposed increased budget for asylum and migration. This is particularly necessary since, first, the integration portfolio was moved to ESF+ without a corresponding increase of the overall ESF budget and, second, the budget for the EU’s cohesion funds was cut. This suggests that integration for refugees and third country nationals in Europe will compete with existing priorities currently covered by those instruments. Research on AMIF demonstrate that required minimum allocations to integration priorities has not produce corresponding spending by Member States, so both allocation and spending requirements for integration are needed.

ENSURING ACCESS TO INTERNATIONAL PROTECTION AT EU BORDERS

The European Commission proposal includes a significant increase in the money the EU will spend on supporting the EU’s border management capacity and the creation of an Integrated Border Management Fund (IBMF) covering border management, visa, and customs control equipment. This is in addition to a substantial increase in the budgets of EU agencies involved in border management such as eu_LISA and Frontex (exact figures are not yet available). In addition, an expansion of the capacity of Frontex with a suggested standing corps of 10,000 border guards by 2027 has been proposed. Compared to this, the suggested budget of the operational agency focusing on asylum support, the European Asylum Support Office seems particularly modest. The balance between strengthening the EU’s asylum systems and strengthening border management should be reassessed. Any increase in budget and staffing for agencies should be accompanied by rigorous financial procedures and effective management, given recent events.

This significant reinforcement of funding for border management comes at a time when the practice of mass expulsions and push backs inside the EU and at its external borders is prevalent as has been documented in the Fundamental Rights Agency’s regular updates of migration related fundamental rights concerns and reports of ECRE’s Asylum Information Database (AIDA). EU funding should be conditional on compliance in practice with the human rights safeguards in EU law. This requires adequate funding for the Frontex Fundamental Rights Officer and for a robust complaints mechanism. In addition, the IBMF should support independent monitoring of border management inside the EU and at the EU’s borders.

The substantially increased budget allocated to border management makes involvement in it more profitable for private companies. This has implications for human rights accountability but also increases the risk of regulatory capture, a process where a public institution or regulatory agency which is supposed to uphold public interest principles advances the political or commercial interests of particular individuals, organisations or companies which it is supposed to be regulating. This needs to be addressed by radically increasing the transparency of the way in which EU funding for border management is awarded and how decisions on priorities for EU border management, including during the MFF negotiations, are made.

III. RECOMMENDATIONS:

The European Commission should:

- » Ensure that EU funding in support of human rights, democracy and rule of law inside and outside the EU is available to registered and unregistered organisations, organisations without legal personality, as well as individual human rights defenders without the need for approval by respective governments;
- » Further simplify the funding rules to ensure that access to funding is determined primarily by an organisation's suitability to deliver the objective rather than its capacity to manage unnecessarily complex procedures.

The European Parliament and European Member States should:

- » Endorse the Justice, Rights and Values Fund, but broaden it to ensure that it is sufficiently ambitious, in line with the proposals developed by MEPs and civil society. Ensure it is adequately funded and accessible for civil society organisations and human rights defenders;
- » Amend the Regulation on the protection of the Union's budget in case of deficiencies as regards the rule of law so that suspension of funding can occur based on an undermining of Article 2 TFEU and is not only about threats to sound financial management;
- » Allow direct funding for local authorities, municipal and regional governments, which work to implement EU asylum law and provide access to rights for refugees.

In its proposal for an instrument establishing the Asylum and Migration Fund (AMF), the European Commission should:

- » Include a minimum 50% target on asylum actions and spending and 25% target on legal migration spending and actions in national programmes;
- » Include the partnership principle as a mandatory requirement for national programmes and allocate a minimum percentage of programme funding to civil society to ensure relevant stakeholders can engage in shaping and implementing AMF funding.

In the proposal for the instrument establishing the European Social Fund +, the European Commission should:

- » Include minimum targets spending for integration of beneficiaries of international protection;
- » Propose monitoring of the impact of asylum and migration policy on integration and institute a commitment for DG Home, DG EMPL and DG REGIO to act on recommendations;
- » Ensure consistent involvement of refugees and migrants in formulating policies, including by keeping the code of conduct on partnership.

The European Parliament and Member States should:

- » Demand a substantial increase in the ESF+ budget to reflect the fact that integration is now part of ESF+, commensurate with the threefold increase of asylum and migration funding.

In the proposal for the instrument establishing the Integrated Border Management Fund, the European Commission should:

- » Include systematic and independent monitoring for instance by civil society as a pre-condition for any funding for border management inside and outside Europe;
- » Ensure wide eligibility to allow CSOs with a focus on human rights to receive funding;
- » Increase transparency for the projects (co)financed with the migration and border management funds by requiring Member States to publish all projects that are implemented;
- » Increase transparency for the contracts awarded by requiring Member States to publish all procurement procedures that have been (co)financed with the migration and border management funds, including information on the contracting authority, contractor and amount of money received.

On the European Border and Coast Guard Agency, Member States and the European Parliament should:

- » Address the need for increased resources of the Frontex Fundamental Rights Officer including for activities such as fundamental rights training and observation missions;
- » Ensure the Frontex Complaints Mechanism is strengthened and functions as a monitoring and accountability tool;
- » Introduce additional oversight mechanisms for Frontex cooperation with third countries.

For the budget of the European Asylum Support Office, Member States and the European Parliament should:

- » Address the discrepancy in capacity made available to support of European asylum systems, compared to the significant increase of the budget for Frontex.