

THE PRICE OF RIGHTS: ASYLUM AND EU EXTERNAL FUNDING

ECRE'S PRELIMINARY ANALYSIS OF THE EUROPEAN COMMISSION'S
PROPOSAL FOR THE EU MULTI-ANNUAL FINANCIAL FRAMEWORK
2021-2027: EXTERNAL FUNDING.

I. INTRODUCTION

The EU is the world's largest development donor and a major and effective provider of humanitarian assistance. Through its funding, especially when it is combined with diplomatic, investment and trade measures, it can play a significant role in addressing forced displacement. The upcoming negotiations on the EU's funding architecture after 2020 and whatever results could have a substantial positive impact on people forcibly displaced and the communities which host them. However, a narrow focus on funding migration control in or by other countries will undermine humanitarian protection, development and security, both for those countries and for the EU itself. It could also fatally damage the EU's emerging diplomatic power just when it is most needed.

This policy note is ECRE's preliminary analysis of the overall European Commission proposal, published in early May 2018, and its implications for refugee rights and forced displacement outside the EU. A more detailed assessment will be provided once the draft legislative instruments are available.

II. ANALYSIS

The European Commission's proposal suggests the consolidation of six instruments into one external instrument, in addition to the inclusion of the European Development Fund (EDF) in the EU's budget. Within this proposed Neighbourhood, Development and International Cooperation Instrument, migration features prominently. One of the overall objectives of the instrument is "to address irregular migration and fight its root causes while creating conditions for the better organisation of legal migration and well-managed mobility", and migration is mentioned as both part of the thematic pillar and the "emerging challenges and priorities cushion" – unallocated money that is not earmarked or formally programmed but can be drawn on flexibly – where addressing migratory pressures is a priority.

RESPONDING TO FORCED DISPLACEMENT

At a time where a record number of people are forcibly displaced, supporting them and the communities which host them must be an urgent priority for the EU. However, this should happen independently of whether they find themselves on what are considered as migration routes to Europe or in long-term displacement. Indeed, it is the lack of mobility and the situation of being stuck that is most characteristic for the vast majority of the world's displaced people, with the average length of displacement now at 18 years.

The post 2020-MFF can equip the EU to play a significant role in supporting refugees, displaced people and their host communities if it focuses on where it can be effective, namely 1) tackling the deep structural causes of forced displacement: the MFF represents an opportunity for the EU to consolidate its role in tackling the real causes of forced displacement, including conflict, absence of security, societal violence and repression. And 2) supporting durable solutions and intervening to prevent the prolongation of displacement. The EU could also support other countries and regions to build asylum systems and support refugee rights but the latter requires Europe to stop dismantling the right to asylum within its own territory. Based on what is already known about the proposal, certain recommendations can be put forward.

First, the proposed consolidated external instrument must enable the EU to fulfil its political commitment to prevent displacement from becoming protracted as formulated in the Communication *Lives in Dignity: from Aid-dependence to Self-reliance*. To do that, it should integrate lessons from past support to displacement such as the need to find a way to deal with competition between short-term humanitarian funding needs and longer-term support.

Second, the EU must also more consistently include displaced communities and refugees in overall support to host communities and vice versa for example through the inclusion of displaced populations as part of national development planning and social safety net provisions. Such an approach entails political engagement with governments on policies that lead to discrimination and exclusion of displaced communities, such as restricted freedom of movement or unreasonable permit schemes. This may often include negotiations with local or municipal governments where opportunities for improved conditions for displaced and host communities may be identified more easily.

Third, the proposed "emergency challenges and priorities cushion" in the funding plan is supposed to allow the EU to be more flexible in its funding allocations and react swiftly to priorities as they arise. Increased flexibility of EU funding is strongly supported by different stakeholders, including civil society, however it should not mean a reduction in transparency and oversight. Nor should it mean allocation of funding according to priorities set in Brussels or EU capitals rather than at the country level.

There is a risk that the increased predictability and oversight of bringing the EDF into the budget process is offset by the creation of a large pot of unallocated money that resembles the various Trust Funds that have been set up. Evaluations have shown that those Trust Funds have re-centralised decision-making power in Brussels, taking it away from EU Delegations, and that they have not been grounded in the principle of partnership which guides EU development assistance. To ensure principled EU action and the relevance of EU activities, as well as oversight of spending, the criteria to mobilise the unallocated amounts need to be clarified in the proposal for the external funding instrument.

TAMING THE EU'S FIXATION ON MIGRATION IN THE NEIGHBOURHOOD, DEVELOPMENT AND INTERNATIONAL COOPERATION INSTRUMENT

The emphasis on migration in the new external funding instrument, which may be interpreted as actions to prevent migration, has implications for refugee protection as disruption of migration prevents access to protection for those who need it. Unless re-framed by introducing safeguards, it also risks undermining the EU's own objectives and credibility as an external actor as set out in the Lisbon Treaty and the Global Strategy and may hinder the effectiveness of EU development assistance.

First, the discussion about the allocations for the post 2020-MFF needs to be based on a more realistic and pragmatic approach to migration which does not view migration as a problem but looks at supporting and managing regular migration for those not requiring international protection. As research has repeatedly demonstrated, increased development goes hand in hand with migration. Thus, the suggestion that more development spending in third countries would lead to less emigration in those countries, especially the least developed, is known to be untrue. Attempting to disrupt migration to Europe also disrupts regional migratory activities which may be essential for economic development. This does not negate the important contribution that EU funding can have in improving people's access to services and livelihoods or in addressing the causes of forced displacement.

Second, the anti-migration stance is advanced by EU Member States rather than by third country governments and therefore undermines the EU's principles of partnership with third countries for development cooperation as outlined in the EU's Agenda for Change. Even where partner governments can be enticed to cooperate through the carrot of development aid (or other more problematic and less transparent incentives), it is unlikely that this will contribute to poverty eradication, sustainable development, improved human rights standards or conflict prevention, objectives that the EU has set itself for its external action in Article 21 of the Lisbon Treaty. The instrumentalisation of external funding to support narrow (misconstrued) EU interests in migration control may indeed rob the EU of its comparative advantage as a donor: EU aid has traditionally been less impacted by national interest and thus was able to provide long-term, predictable support based on needs in third countries.

Third, specifying funding targets for migration as has been proposed will have implications for the way in which the EU can engage with third countries. It risks tying the EU's hands by committing it to prioritising migration-related funding regardless of an assessment of needs or opportunities for EU funding to make a difference. This can be easily exploited by governments for which the EU's focus on migration – as opposed to other considerations such as human rights and governance – is a welcome development.

INCREASING SUPPORT TO FUNCTIONING ASYLUM SYSTEMS AND INCLUSION IN THE INSTRUMENT FOR PRE-ACCESSION ASSISTANCE (IPA)

The Commission's proposal envisages a new Instrument for Pre-Accession Assistance (IPA) for certain candidate and associated countries. The IPA II has increasingly supported cooperation on migration. This includes contribution to pooled funds such as the Facility for Refugees in Turkey or cross-border cooperation projects for migration management. Given the consistently low recognition rates across the Western Balkan countries, the prevalence of push-backs at borders, and mass expulsions in all countries currently benefitting from the IPA, it is clear that support to fair and functioning asylum systems, independent monitoring, and accountability mechanisms must be a priority for the next IPA. The priority areas listed as objectives for the next IPA are therefore too narrowly focused on border management. They also do not reference the need to support broader inclusion of asylum seekers, refugees and migrants in societies and adequate access to social services, education, legal aid and healthcare.

III. RECOMMENDATIONS

In the proposal for the Neighbourhood, Development and International Cooperation Instrument, the European Commission should:

- » Reiterate commitment to the objectives of EU development assistance as addressing the eradication of poverty, supporting sustainable development and realisation of rights, in line with the Sustainable Development Goals (SDGs). It should ensure EU programmes are developed according to these objectives, rather than people's migration status or presence on migration routes;
- » Reiterate the EU's commitment to the principle of partnership and a rights-based approach (RBA) to development and the application of RBA tool box to all migration-related funding;
- » Include the improvement of protection and realisation of rights of displaced people as explicit objectives for EU funding;
- » Specify the criteria that would trigger money from the unallocated reserve including a focus on the level of need among displaced and host communities and the potential of EU funding to effect change, including on a more systematic level of protection of rights of displaced people;
- » Commit to the involvement of migrant rights organisation in the development of migration related programmes.

In the proposal for the Neighbourhood, Development and International Cooperation Instrument, the European External Action Service should:

- » Ensure that EU Delegations engage with authorities and civil society at the national, local and municipal levels to ensure EU funding contributes to systematic improvement of rights of displaced people and refugees.

In the proposal for an Instrument for Pre-Accession Assistance (IPA), the European Commission should:

- » Include a specific objective to support integration of people seeking asylum, refugees in migrants;
- » Ensure that independent monitoring of asylum procedures and border management by civil society can be supported through the Instrument.