

**ECRE COMMENTS ON THE  
EUROPEAN COMMISSION  
PROPOSAL ON THE ASYLUM  
AND MIGRATION FUND (AMF)  
COM(2018) 471**

SEPTEMBER 2018

# TABLE OF CONTENTS

SUMMARY OF VIEWS .....	3
INTRODUCTION.....	4
ANALYSIS OF KEY PROVISIONS .....	5
I. Placing the development of fair and humane asylum systems as central objective of the fund .....	5
II. Contributions to national programmes .....	5
III. Allocating resources to integration and asylum priorities .....	7
IV. Ensuring integration of asylum seekers does not fall between AMF and European Social Fund+ (ESF+) .....	8
V. Ensuring EU funding reaches actors with the right expertise who are willing and able to spend it .....	8
VI. Defining and limiting EU internal asylum funding spent outside the EU .....	9
VII. Maintaining resettlement as a humanitarian protection tool .....	10
VIII. Supporting specifically vulnerable asylum seekers and migrants .....	11
IX. Strengthening partnership with civil society .....	11
X. Increasing monitoring and transparency .....	12
ANNEX – LIST OF PROPOSED AMENDMENTS.....	13

# SUMMARY OF VIEWS

ECRE makes the following observations and recommendations to the co-legislators on the Commission proposal for a regulation establishing the Asylum and Migration Fund (AMF) COM (2018) 471 final.

- 1. Development of fair and humane asylum systems as a central objective of the fund:** The objective of contributing to common standards on policy on asylum and commitment to the rights and principles enshrined in the Charter of Fundamental Rights of the EU should be clearly stated.
- 2. Allocation of funding to national programmes:** The suggested criteria for the allocation of funding to the programmes under shared management should be revised so that they do not incentivize return decisions and forced returns or reward Member States who have lower than EU average asylum recognition rates.
- 3. Allocating resources to integration and asylum priorities:** Minimum allocation and spending requirements of 50% for the asylum and 30 % for the integration objective in national programmes should be included to ensure that Member States adequately invest in these areas.
- 4. Ensuing integration of asylum seekers does not fall between the AMF and European Social Fund+ (ESF+):** the proposed division of responsibility between AMF and ESF+ must be clarified to ensure that integration and participation from the day people arrive in an EU Member State is ensured.
- 5. Ensuring EU funding reaches actors with the right expertise who are willing and able to spend it:** Increase the percentage of funding managed by the European Commission, introduce minimum allocations for cities and civil society actors across all priorities within national programmes and reduce barriers to civil society involvement in AMF. The European Commission should be able to reabsorb funds where Member States deliberately choose not to spend them.
- 6. Defining and limiting EU internal asylum funding spent outside the EU:** Reference to the AMF supporting activities outside the EU should be limited and the specific activities should be defined. Where external spending of funds is referenced, this must be made conditional on the third country concerned complying with its obligations under international human rights law.
- 7. Maintaining resettlement as a humanitarian protection tool:** References to using resettlement to achieve EU migration control objectives should be deleted.
- 8. Supporting specifically vulnerable asylum seekers and migrants:** The AMF should reference and support the specific needs of torture survivors among people seeking asylum and migrants.
- 9. Strengthening partnership with civil society:** The partnership principle should be applied in national programmes as well as funding channelled through the thematic facility.
- 10. Increasing monitoring and transparency:** Both Member States and the European Commission should be required to publish the annual performance reports.

# INTRODUCTION

The proposal for a regulation establishing the Asylum and Migration Fund (AMF) is part of the European Commission's proposal for the next Multi-annual Financial Framework (2021-2027).

The overall MFF proposal foresees a significant increase in the amount of money awarded to migration and border management. As part of this, the amount of money to be allocated to AMF is suggested to be 10.4 billion Euro, which constitutes a considerable increase from the initial allocation of the current funding period (2014-2020) which was 3.1 billion in 2014 and the subsequent increase to 6.6 billion Euro. Increased resources for the area of asylum and migration are certainly welcome though the increase in this area falls well short of the suggested five-fold increase in the budget awarded for border management which demonstrates the political priorities for the next MFF. The AMF can play a considerable role in ensuring fair and effective asylum systems in Europe, returns in dignity of third country nationals and contribute to the harmonization of standards in relation to asylum, reception conditions and integration. For this to happen, the central objective of contributing to European asylum policy has to be stated more clearly.

The suggested rebalancing of the percentage of funding allocated to Member States and the European Commission from the current 88% - 12% to 60% - 40% is positive. Similarly, the suggested co-financing rate level of up to 90% in the field of integration is addressing a long-standing obstacle to civil society accessing the funds. However, the proposal needs to further be amended to ensure that EU funding is spend in the most effective way and that it supports those who are able and willing to contribute to its objective, more specifically civil society and local authorities.

As part of effective implementation of EU funding, it also has to be ensured that EU resources are allocated according to needs. The suggested allocation of resources to Member States national programmes risks skewing funds according to numbers of return decisions and affected returns while the needs on improving asylum and supporting integration receive less attention. This, as well as the lack of allocation and spending requirements for asylum and integration priorities risks that certain Member States maintain a poor standard of asylum and integration services.

Transferring the bulk of the responsibility for support of integration of third country nationals to the proposed European Social Fund + (ESF+) is a welcome development as it underlines the need to consider this area within the broader work of building inclusive societies. However, it does not come without its challenges. It must be ensured that across the two funds, an adequate amount of support is dedicated to the integration of third country nationals, that individuals do not fall between the cracks of different funding mechanisms and responsible authorities at the Member State level and that support can be provided to asylum seekers, those whose claims have been rejected as well as people with precarious status.

This paper includes concrete proposals for improving the proposal. A full list of proposed amendments can be found in Annex for ease of reference.

# ANALYSIS OF KEY PROVISIONS

## I. PLACING THE DEVELOPMENT OF FAIR AND HUMANE ASYLUM SYSTEMS AS CENTRAL OBJECTIVE OF THE FUND

The proposal includes considerably less references to asylum than the current AMIF regulation in the overall objective. Given that AMF is the main funding resource to support a common space for international protection in Europe and that one of the main reasons for the so-called crisis in Europe in the last years was the lack of functioning asylum systems, this needs to be addressed.

ECRE makes the following recommendation:

Amend Article 3 to read:

The policy objective of the Fund shall be to contribute to an efficient management of migration flows and a **common policy on asylum; while fully respecting the rights and principles enshrined in the Charter of Fundamental Rights of the EU** and in line with the relevant Union *acquis* in compliance with the Union's commitment on fundamental rights.

Amend Article 13 (1) to read:

Each Member State shall ensure that the priorities addressed in its programme are consistent with, and respond to, the Union priorities and challenges in the area of **asylum and** migration management and are fully in line with the relevant Union *acquis* and agreed Union priorities.

## II. CONTRIBUTIONS TO NATIONAL PROGRAMMES

The suggested criteria for the allocation of funding to the national programmes under shared management which it outlined in Annex I are very problematic. While AMF funding should be made available to support the return of third country nationals in dignity, the proposed formula provides incentives for Member States to issue return decisions and enforce them, which risks to further exacerbate asylum procedures being undermined by governments' pre-occupation with return. In addition, the suggested formula skews resource allocation so that Member States receive more money for an individual who has been issued a return decision or has been returned (either through enforced removal or what the Return Directive calls "voluntary departure" where a person complies with the return decision) than for an individual who has claimed asylum or has been awarded international protection.

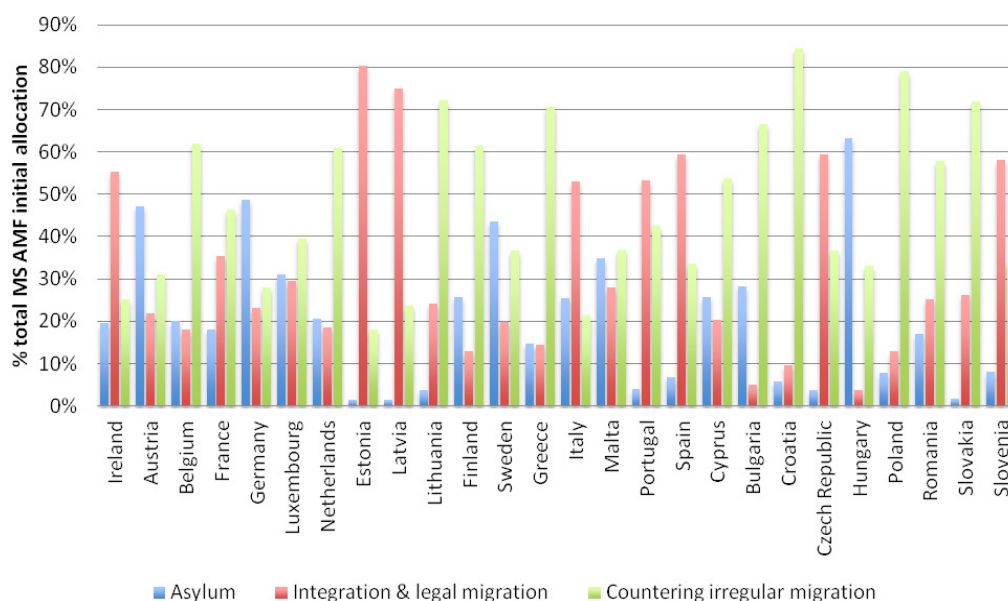
Annex I of the proposal suggests that for the 60% of AMF going to national programmes, each Member State shall receive a fixed amount of 5 million Euro from the Fund at the start of the programming period. To determine the rest of the allocation, a mechanism is proposed that will use asylum indicators (weighted 30%) legal migration and integration indicators (weighted 30%) and indicators related to countering irregular migration/return (weighted 40%).<sup>1</sup> The weighting of 40% means that of the just over 5 billion Euro available for national programmes, over 2 billion will be allocated based on return indicators. One of the return indicators is the number of third country nationals who are subject to a return decision. The other refers to the number of third-country nationals who have actually left the territory of the Member State whether voluntarily or under coercion.

The graph below illustrates the proportions of simulated Member States initial AMF allocations (2021-27) per specific objective.<sup>2</sup>

1. European Commission, Annexes to the Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (COM(2018) 471 final, Brussels 12.06.2018: [https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-asylum-migration-fund-annex\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-asylum-migration-fund-annex_en.pdf)
2. Asylum allocation: persons granted refugee status 2015, 2016, 2017; persons granted subsidiary/temporary protection 2015, 2016, 2017; number of asylum applications: 2015-17; number of resettled persons 2015, 2016, 2017 (no data available for number of persons being resettled, as specified in the AMF distribution key).

Integration & legal migration allocation: total number of legally residing TCNs 2015-2017 (data filtered to include permits of 12 months or longer duration and exclude permits related to education); number of TCNs obtaining a first residence permit (data filtered to exclude students or permits of less than 12 months duration) 2015-17.

Countering irregular migration allocation: number of TCNs subject to a return decision 2015-2017; number of TCNs who have left the territory as a result of an order to leave (voluntary or forced) 2015-2017.



Applying the suggested allocation model would mean that Belgium would receive more funding based on the return indicators than Sweden based on the integration ones (123 million compared to 51 million Euros) due to the weight based on return indicators compared to integration. For the same reason, Greece's allocation based on integration indicators would only be marginally higher than contributions to Austria for return indicators, both at around 52 million Euro.

While the suggested indicators regarding asylum and integration are used to assess needs in these areas, those used to calculate allocations under the countering irregular migration priority are more measures of the extent to which return is prioritised in practice by Member States. This has negative implications on other priorities. In terms of financial allocations resulting from the use of these indicators, some Member States may effectively be financially rewarded for asylum recognition rates<sup>3</sup> far lower than the EU average, which in turn create larger populations eligible to undergo return procedures:

Instead of incentivizing low recognition rates, it should be considered how the allocation of funds to individual Member States can contribute to a convergence of asylum recognition rates at the EU level. In addition, the increase in the number of people who have received protection status in the EU in the past three years means that the AMF needs to provide additional resources for the support to integration in national programmes.

ECRE makes the following recommendation:

Delete the suggested weighting of indicators in Annex I and base the allocation of funding to the programmes under shared management on the following indicators:

- » Number of third-country nationals or stateless persons having been granted the status defined by the Geneva Convention with the meaning of recast Directive 2011/95/EU
- » Number of third-country nationals or stateless persons enjoying a form of subsidiary protection with the meaning of recast Directive 2011/95/EU
- » Number of third-country nationals or stateless persons enjoying temporary protection within the meaning of Directive 2001/55/EC
- » **Number of third country nationals or stateless persons enjoying some form of humanitarian protection/protection status under national legislation**
- » Number of third-country nationals or stateless persons who have applied for international protection.
- » Number of third-country nationals or stateless persons who are being or have been resettled in a Member State.

3. Asylum recognition rates are here expressed as number of persons granted refugee status or temporary/subsidiary protection in a specific year as a percentage of the number of asylum claims in the same year. The calculation is indicative only, as the grants of status in any one year do not necessarily relate to the specific asylum claims made in the same year.

- » Number of legally residing third-country nationals in a Member State.<sup>4</sup>
- » Number of third-country nationals who have obtained a first residence permit.<sup>5</sup>
- » Number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and / or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return;

In case there is an insistence to weigh indicators according to priorities, ECRE suggests the following:

Amend Annex I (1b) to read:

The remaining resources referred to in Article 11 shall be distributed based on the following criteria:

- » ~~30~~ **40** % for asylum
- » ~~30~~ **40** % for legal migration and integration
- » ~~40~~ **20** % for countering irregular migration including returns

The same indicators as listed above should apply, meaning that the return indicators in Annex I Article 4 should be revised to read:

The following criteria in the area of countering irregular migration including returns will be taken into account and shall be weighted as follows:

(a) ~~50% in proportion to~~ the number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and / or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return

(b) ~~50% in proportion to the number of third-country nationals who have actually left the territory of the Member State following an administrative or judicial order to leave, whether undertaken voluntarily or under coercion.~~

### III. ALLOCATING RESOURCES TO INTEGRATION AND ASYLUM PRIORITIES

The fact that the current proposal does not include allocation or spending requirements for the asylum and integration priority under national programmes is worrying. There are big discrepancies in spending levels on asylum, integration and return between EU Member States. This undermines the creation of a common space for protection inside the EU. Recent ECRE and UNHCR research<sup>6</sup> 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. This is despite the fact that the current AMIF regulation includes minimum allocation requirements for expenditure related to both asylum and integration which are 20% of their national programme each. There needs to be minimum allocation and spending requirements for the asylum, integration and legal migration actions in national programmes to ensure that Member States adequately invest in these areas.

ECRE makes the following recommendations:

Add the following paragraph to Article 8:

**4. Member States shall allocate and spend at least 50 % of those resources to the specific objective referred to in point (a) of the first subparagraph of Article 3(2), and at least 30 % to the specific objective referred to in point (b) of the first subparagraph of Article 3(2).**

4. The suggested categories of persons to not be included in this calculation (Annex 1, Article 3c) could be maintained.

5. The suggested categories of persons to not be included in this calculation (Annex 1, Article 3c) could be maintained.

6. UNHCR & ECRE (2018): 'Follow the Money: Assessing the use of EU Asylum, Migration and Integration Fund (AMIF) funding at the national level. Available at: [https://www.ecre.org/wp-content/uploads/2018/01/follow-the-money\\_AMIF\\_UNHCR\\_ECRE\\_23-11-2018.pdf](https://www.ecre.org/wp-content/uploads/2018/01/follow-the-money_AMIF_UNHCR_ECRE_23-11-2018.pdf)

## **IV. ENSURING INTEGRATION OF ASYLUM SEEKERS DOES NOT FALL BETWEEN AMF AND EUROPEAN SOCIAL FUND+ (ESF+)**

Apart from early integration measures, support for integration which is currently part of AMIF is suggested to be transferred to ESF+ in the next MFF. ECRE welcomes this opportunity to position integration of refugees and other third country nationals in the broader framework of building inclusive societies. However, there are concerns that the suggested division of responsibility between the proposed AMF and ESF+ may undermine the principle of starting integration and participation, more specifically labour market integration and training, from the day people arrive in an EU Member State and may limit support to integration for people whose asylum claim has been rejected but who cannot be returned. Against the background of proposals of prolonged detention of people seeking asylum and those whose asylum claim has been rejected, often in remote 'centres' where people's access to services supporting integration are limited, often not foreseen or massively restricted, there is a risk that the suggested division of responsibilities between the funds is used as a justification by Member States to exclude asylum seekers and people with precarious status from broader integration programmes.

The separation of funding between early integration and medium to long-term integration is especially difficult in the field of labour market integration, where the focus needs to be on supporting the employability of a person which is an ongoing process, best organized within the relevant public authority in charge of the labour market in the specific Member State. An example for this is the approach to early labour market integration which was taken in Germany executed by the government's employment agencies and supported by ESF.<sup>7</sup> Instead of setting up separate procedures or administrative systems for people seeking asylum, the focus should be on ensuring that asylum seekers and other third country nationals are included in measures developed and implemented by the relevant public authority and by ESF and future ESF+ ongoing activities.

ECRE therefore makes the following recommendation:

Delete the following paragraphs in Annex III (Scope of support):

~~3 (d): the assessment of skills and qualifications acquired in a third country, as well as their transparency and compatibility with those of a Member State;~~

~~3 (g) early integration measures such as tailored support in accordance with the needs of third-country nationals and integration programmes focusing on education, language and other training such as civic orientation courses and professional guidance.~~

## **V. ENSURING EU FUNDING REACHES ACTORS WITH THE RIGHT EXPERTISE WHO ARE WILLING AND ABLE TO SPEND IT**

The proposal addresses the current imbalance between funding that is managed by and accessible to national authorities and that can benefit civil society and local authorities by suggesting that 60% of the AMF should be allocated to national programmes managed by Member States and 40% to the thematic facility, which is managed by the European Commission.

Even the revised break-down carries several risks for the appropriate and efficient spending of EU funding. It provides Member States, some of which have and are repeatedly violating EU policy, the primary responsibility for allocating and spending EU funds in support of an EU asylum system. Often this is at the expense of funding for civil society or local authorities who have the necessary expertise and are willing to promote and improve compliance with EU asylum law and support the building of inclusive societies. While some Member States disburse parts of their national programmes to implementing partners, which can include civil society, there are examples of Member States who chose not to or deliberately exclude those actors from current AMIF funding. Other Member States lack the capacity to absorb the suggested amount of funding to their national programmes. All of this leads to lack of or inefficient use of EU resources despite the pressing needs to support inclusion, fair and humane asylum systems and development of legal migration across EU Member States.

While an assessment of the current AMIF suggests that there are positive examples of increasing civil society participation in implementing national programmes, in some Member States implementation remains largely state-led. In some instances, this is due to a weaker civil society sector overall or less established roles of civil society in national asylum or integration frameworks. However, EU funding rules such as high co-financing

7. ESF Programme: „Integration von Asylbewerberinnen, Asylbewerbern und Flüchtlingen (IvAF)“ More information available at: <https://www.esf.de/portal/DE/Foerderperiode-2014-2020/ESF-Programme/bmas/2014-10-21-ESF-Integrationsrichtlinie-Bund.html>



rates can create a barrier to civil society, especially where governments do not provide the necessary co-financing for AMIF national programmes.

The AMF proposal should address these risks by increasing the percentage of the fund that is managed by the European Commission and by introducing minimum allocations for local authorities and civil society actors across all priorities within national programmes. It should also be possible for the European Commission to reabsorb funds where Member States deliberately chose not to spend EU resources and spend them under the thematic facility.

ECRE therefore makes the following recommendation:

Amend Article 8 to read:

2. The financial resources shall be used as follows:

- (a). EUR ~~6 249 000 000~~ **5 207 500 000** shall be allocated to the programmes implemented under shared management;
- (b). EUR ~~4 166 000 000~~ **5 207 500 000** shall be allocated to the thematic facility

Add the following paragraph to Article 8:

**4. Member States shall allocate at least 50 % of those resources to the specific objective referred to in point (a) of the first subparagraph of Article 3(2), and at least 30 % to the specific objective referred to in point (b) of the first subparagraph of Article 3(2). A reasonable minimum percentages of funding under those two objectives should be allocated to civil society organisations and local authorities.**

Amend Article 9 (2) to read:

Funding from the thematic facility shall address priorities with a high added value to the Union or be used to respond to urgent needs in line with agreed Union priorities as outlined in Annex II. **A reasonable minimum percentages of funding should be allocated to civil society organisations and local authorities under all specific objectives.**

Amend Article 12 to read:

1. The contribution from the Union budget shall not exceed ~~75~~ **80** % of the total eligible expenditure of a project. **Member States are encouraged to provide matching funds for activities supported by this fund.**

Add the following paragraph to Article 14:

**4. Where the mid-term review finds consistent underspending or an unwillingness of a Member State to disburse the funding allocated to its national programme, the European Commission should suspend further dispersal of funds and ask for a reabsorption of the funds already dispersed to the Member State so it can be reallocated within the Thematic Facility.**

## **VI. DEFINING AND LIMITING EU INTERNAL ASYLUM FUNDING SPENT OUTSIDE THE EU**

The current proposal strengthens the provisions for AMF to support activities outside the EU by allowing third countries to be associated with the AMF. Article 5 of the current proposal does not provide a lot of detail to determine how far such a participation of third countries or a legal entity in a third country (as stipulated in Article 6.3) could potentially go. The current lack of specificity makes it difficult to assess the potential legal and ethical considerations related to e.g. potential posting of officials from third countries in EU Member States for the purpose of observing asylum, border or return policies.

Forced displacement and migration can play a role in cooperation with third countries but this needs to be guided by the principles laid down in Article 21 of the Treaty of the European Union (TEU), namely: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the United Nations Charter of 1945

and international law. It also needs to be part of an overall approach led by the services in charge of external action who have the necessary understanding of the country context and are in charge of developing the EU's diplomatic relations, including a partnership approach not only with third country governments but societies. Using the AMF to implement the EU's narrowly defined migration management interests in third countries does not only risk undermining a more comprehensive EU approach but also exposes the EU to a greater risk to contribute to direct or indirect complicity in human rights violations in third countries.

The AMF is a tool to pursue internal EU objectives and the instances where it may be used outside the EU should be clearly articulated and limited. This could include instances where the cooperation with third countries is within the domain of internal affairs, i.e. it requires the necessary level of expertise, such as for the development of legal migration channels or cooperation on return and readmission. The issue of cross border cooperation could be another area, but given that the next MFF is proposing a separate, well-endowed Integrated Border Management Fund, activities related to border management and cooperation should not be funded by the AMF.

Where the possibility for external spending is referenced in the proposal, the necessary human rights safeguards need to be included given the risks of human rights violations facing people who are migrating. Without an explicit reference to an assessment and monitoring of the human rights compliance of any activities supported by EU funding the EU risks being complicit, directly or indirectly, in human rights violations. This is illustrated by the integrated border management measures at the EU's borders, where the European Commission concluded that the ISF-Border and Visa Fund has not supported the application of the non-refoulement principle.<sup>8</sup>

ECRE makes the following recommendations:

Amend Article 5 to read:

The Fund shall be open to third countries **for activities in the field of legal migration, return and readmission** in accordance with the conditions laid down in a specific agreement covering the participation of the third country to the Asylum and Migration Fund **which should be publicly available**, provided that the agreement:

- » lays down the conditions of participation in the Fund, **including the application of rights guaranteed under the Refugee Convention and relevant EU instruments**, calculation of financial contributions to the Fund and their administrative costs. These contributions shall constitute assigned revenues in accordance with Article [21(5)] of the Financial Regulation;
- » **Establishment of an adequate monitoring of human rights compliance in the third country based on information provided by international mechanisms such as the Universal Periodic Review as well as specific assessment of the human rights impact or the activities supported by EU funding.**

Amend Article 6 (3) to read:

Legal entities in a third country are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action **and after they have been assessed for their ability to ensure human rights compliance of their actions.**

## **VII. MAINTAINING RESETTLEMENT AS A HUMANITARIAN PROTECTION TOOL**

Resettlement is a pathway to protection, saves lives and supports the sharing of solidarity for refugees globally. Any suggestion for the allocation of resettlement places or the choice of countries from which EU Member State resettle to be made conditional on the achievement of the EU's objectives related to migration control undermines this function and challenges the integrity of resettlement as a humanitarian protection tool.

ECRE makes the following recommendation:

Amend Recital 11 to read:

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8. European Commission, Interim Evaluation of the Internal Security Fund - Borders and Visa 2014-2017, SWD(2018) 340 final, Brussels. Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180612\\_sw-d-2018-340-commission-staff-working-document\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180612_sw-d-2018-340-commission-staff-working-document_en.pdf)

Partnerships and cooperation with third countries are an essential component of Union asylum policy to ensure the adequate management of flows of persons applying for asylum or other forms of international protection. With the aim of replacing the unsafe and irregular arrivals with legal and safe arrival to the territory of the Member States of third-country nationals or stateless persons in need of international protection, expressing solidarity with countries in regions to which or within which a large number of persons in need of international protection have been displaced by helping to alleviate the pressure on those countries, ~~helping achieve the Union's migration policy objectives by increasing the Union's leverage vis-à-vis third countries~~, and of effectively contributing to global resettlement initiatives by speaking with one voice in international fora and with third countries, the Fund should provide financial incentives to the implementation of the Union Resettlement [and Humanitarian Admission] Framework.

## VIII. SUPPORTING SPECIFICALLY VULNERABLE ASYLUM SEEKERS AND MIGRANTS

In addition to Directive 2011/36/EU on victims of trafficking in human beings, the special needs of torture survivors among people seeking asylum are subject to specific provisions in the EU asylum *acquis* as they are listed as vulnerable applicants. These include obligations of Member States to provide access to appropriate medical and psychological treatment or care (EU Reception Conditions Directive; 2013/33/EU Article 25), an obligation to assess whether applicants are in need of special procedural guarantees and a presumption against the use of accelerated or border procedures with respect to asylum seekers who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence (EU Asylum Procedures Directive; 2013/32/EU Article 24), an obligations to provide access to health care for torture survivors who obtained international protection under the same conditions as nationals (EU Qualification Directive; 2011/95/EU Article 30) and an obligation on Member States to exchange information on a person's physical or mental health prior to a Dublin transfer (Dublin III Regulation, No 604/2013, Article 32). EU Member States are responsible for addressing those needs and the proposed AMF should explicitly refer to these obligations and make sure that AMF funding can support the EU Member States to do so.

ECRE makes the following recommendation:

Amend recital 27 to read:

The Fund should support Member States, either directly or indirectly, in their implementation of Directive 2011/36/EU of the European Parliament and of the Council which sets forth provisions on assistance, support and protection of victims of trafficking in human beings **and EU Reception Conditions Directive 2013/33/EU (Article 25), EU Asylum Procedures Directive; 2013/32/EU (Article 24), EU Asylum Qualification Directive; 2011/95/EU (Article 30) and Dublin III Regulation, 604/2013 (Article 32) which imposes obligations to identify and address the specific need of asylum seekers who have been subjected to torture or other forms of serious violence.**

Add the following paragraph to Article 9:

**(g): The Thematic Facility shall provide adequate support to specialized civil society organisations for delivering qualified psycho-social and rehabilitation services to the victims of violence and torture and other vulnerable groups and utilize their professional knowledge and experience.**

Add the following paragraph to Annex III (Scope of support):

**Article 2 (j): Early identification of victims of violence and torture and other vulnerable groups upon people's arrival to an EU Member States and referral to specialized services.**

**Article 2 (k): Delivery of qualified psycho-social and rehabilitation services to the victims of violence and torture.**

## IX. STRENGTHENING PARTNERSHIP WITH CIVIL SOCIETY

Civil society, including refugee led organisations should be involved in the development, implementation and monitoring of EU funding on asylum. The provisions for cooperation with civil society for part of the AMF that is under shared management and where Member States are responsible for implementation, is included in the Common Provisions Regulation (CPR). However, the CPR does not specify how the partnership principle

should be ensured under the part of the funding allocated under direct or indirect management in the Thematic Facility. The European Commission should therefore adopt good practice of regular consultation with civil society on the planning and implementation of activities under the Thematic Facility.

When the European Commission reviews national programmes submitted by Member States, it should specifically assess adequate involvement of partners as required by the Code of Conduct and where necessary formulate recommendations for improvement.

ECRE makes the following recommendations:

Add the following paragraph to Article 9:

**9. The European Commission will ensure regular engagement with civil society organisations to discuss planning and implementation of activities under the thematic facility.**

Amend Article 13 (2) to read:

The Commission shall ensure that the European Union Agency for Asylum and the European Border and Coast Guard Agency are associated to the process of developing the programmes at an early stage, as regards the areas of their competence. The Commission shall consult the European Border and Coast Guard Agency and the European Union Agency for Asylum on the draft programmes to ensure consistency and complementarity of the actions of the agencies and those of the Member States. **The European Commission shall assess the extent to which partners have been adequately involved in the development of the national programme and make recommendations to the Member State in this respect.**

## **X. INCREASING MONITORING AND TRANSPARENCY**

Currently Member States are required to publish the annual implementation reports as well as mid-term evaluations, but ECRE and UNHCR research has shown that this is not complied with in many Member States. The European Commission does not publish the annual implementation reports either. This means that it is very difficult for interested individuals and organisations to understand how AMIF funding has been used at the Member State level.

ECRE makes the following recommendations:

Amend Article 30 to read:

By 15 February 2023 and by the same date of each subsequent year up to and including 2031, Member States shall submit to the Commission the annual performance report as referred to in Article 36(6) of Regulation (EU).../2021 [Common Provisions Regulation]. The report submitted in 2023 shall cover the implementation of the programme in the period to 30 June 2022. **EU Member States shall publish these reports on the dedicated website of the Managing Authority as stipulated in Article 44 of the Common Provisions Regulation. The European Commission shall make annual performance reports available on a dedicated webpage.**

# ANNEX–LIST OF PROPOSED AMENDMENTS

Amend Recital 11 to read:

Partnerships and cooperation with third countries are an essential component of Union asylum policy to ensure the adequate management of flows of persons applying for asylum or other forms of international protection. With the aim of replacing the unsafe and irregular arrivals with legal and safe arrival to the territory of the Member States of third-country nationals or stateless persons in need of international protection, expressing solidarity with countries in regions to which or within which a large number of persons in need of international protection have been displaced by helping to alleviate the pressure on those countries, ~~helping achieve the Union's migration policy objectives by increasing the Union's leverage vis-à-vis third countries~~, and of effectively contributing to global resettlement initiatives by speaking with one voice in international fora and with third countries, the Fund should provide financial incentives to the implementation of the Union Resettlement [and Humanitarian Admission] Framework

Amend recital 27 to read:

The Fund should support Member States, either directly or indirectly, in their implementation of Directive 2011/36/EU of the European Parliament and of the Council which sets forth provisions on assistance, support and protection of victims of trafficking in human beings **and EU Reception Conditions Directive 2013/33/EU (Article 25), EU Asylum Procedures Directive; 2013/32/EU (Article 24), EU Asylum Qualification Directive; 2011/95/EU (Article 30) and Dublin III Regulation, 604/2013 (Article 32) which imposes obligations to identify and address the specific need of asylum seekers who have been subjected to torture or other forms of serious violence.**

Amend Article 3 to read:

The policy objective of the Fund shall be to contribute to an efficient management of migration flows **and a common policy on asylum, while fully respecting the rights and principles enshrined in the Charter of Fundamental Rights of the EU and** in line with the relevant Union and in compliance with the Union's commitment on fundamental rights.

Amend Article 5 to read:

The Fund shall be open to third countries **for activities in the field of legal migration, return and readmission** in accordance with the conditions laid down in a specific agreement covering the participation of the third country to the Asylum and Migration Fund **which should be publicly available**, provided that the agreement:

- » lays down the conditions of participation in the Fund, **including the application of rights guaranteed under the Refugee Convention and relevant EU instruments**, calculation of financial contributions to the Fund and their administrative costs. These contributions shall constitute assigned revenues in accordance with Article [21(5)] of the Financial Regulation;
- » **Establishment of an adequate monitoring of human rights compliance in the third country based on information provided by international mechanisms such as the Universal Periodic Review as well as specific assessment of the human rights impact or the activities supported by EU funding.**

Amend Article 6 (3) to read:

Legal entities in a third country are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action **and after they have been assessed for their ability to ensure human rights compliance of their actions.**

Add the following paragraph to Article 8:

**4. Member States shall allocate and spend at least 50 % of those resources to the specific objective referred to in point (a) of the first subparagraph of Article 3(2), and at least 30 % to the specific objective referred to in point (b) of the first subparagraph of Article 3(2).**

Add the following paragraph to Article 9.1:

(g): **The Thematic Facility shall provide adequate support to specialized civil society organisations for delivering qualified psycho-social and rehabilitation services to the victims of violence and torture and utilize their professional knowledge and experience.**

Amend Article 9 (2) to read:

Funding from the thematic facility shall address priorities with a high added value to the Union or be used to respond to urgent needs in line with agreed Union priorities as outlined in Annex II. **A reasonable minimum percentages of funding should be allocated to civil society organisations and local authorities under all specific objectives.**

Add the following paragraph to Article 9:

**9. The European Commission will ensure regular engagement with civil society organisations to discuss planning and implementation of activities under the thematic facility.**

Amend Article 12 to read:

1. The contribution from the Union budget shall not exceed ~~75~~ **80** % of the total eligible expenditure of a project. **Member States are encouraged to provide matching funds for activities supported by this fund.**

Amend Article 13 (2) to read:

The Commission shall ensure that the European Union Agency for Asylum and the European Border and Coast Guard Agency are associated to the process of developing the programmes at an early stage, as regards the areas of their competence. The Commission shall consult the European Border and Coast Guard Agency and the European Union Agency for Asylum on the draft programmes to ensure consistency and complementarity of the actions of the agencies and those of the Member States. **The European Commission shall assess the extent to which partners have been adequately involved in the development of the national programme and make recommendations to the Member State in this respect.**

Add the following paragraph to Article 14:

**4. Where the mid-term review finds consistent underspending or an unwillingness of a Member State to disburse the funding allocated to its national programme, the European Commission should suspend further dispersal of funds and ask for a reabsorption of the funds already dispersed to the Member State so it can be reallocated within the Thematic Facility.**

Amend Article 30 to read:

By 15 February 2023 and by the same date of each subsequent year up to and including 2031, Member States shall submit to the Commission the annual performance report as referred to in Article 36(6) of Regulation (EU).../2021 [Common Provisions Regulation]. The report submitted in 2023 shall cover the implementation of the programme in the period to 30 June 2022. **EU Member States shall publish these reports on the dedicated website of the Managing Authority as stipulated in Article 44 of the Common Provisions Regulation. The European Commission shall make annual performance reports available on a dedicated webpage.**

#### **Annex I:**

Delete the suggested weighting of indicators in Annex I and base the allocation of funding to the programmes under shared management on the following indicators:

- » Number of third-country nationals or stateless persons having been granted the status defined by the Geneva Convention with the meaning of recast Directive 2011/95/EU1
- » Number of third-country nationals or stateless persons enjoying a form of subsidiary protection with the meaning of recast Directive 2011/95/EU1
- » Number of third-country nationals or stateless persons enjoying temporary protection within the meaning of Directive 2001/55/EC2
- » **Number of third country nationals or stateless persons enjoying some form of humanitarian**

### **protection/protection status under national legislation**

- » Number of third-country nationals or stateless persons who have applied for international protection.
- » Number of third-country nationals or stateless persons who are being or have been resettled in a Member State.
- » Number of legally residing third-country nationals in a Member State.<sup>9</sup>
- » Number of third-country nationals who have obtained a first residence permit.<sup>10</sup>
- » Number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and / or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return;

In case there is an insistence to weigh indicators according to priorities, ECRE suggests the following:

Amend Annex I (1b) to read:

The remaining resources referred to in Article 11 shall be distributed based on the following criteria:

- » ~~30~~ **40** % for asylum
- » ~~30~~ **40** % for legal migration and integration
- » ~~40~~ **20** % for countering irregular migration including returns

The same indicators as listed above should apply, meaning that the return indicators in Annex I Article 4 should be revised to read:

The following criteria in the area of countering irregular migration including returns will be taken into account and shall be weighted as follows:

(a) ~~50% in proportion to~~ the number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and / or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return

~~(b) 50% in proportion to the number of third-country nationals who have actually left the territory of the Member State following an administrative or judicial order to leave, whether undertaken voluntarily or under coercion.~~

### **Annex III:**

Delete the following paragraphs in Annex III (Scope of support):

~~3(d): the assessment of skills and qualifications acquired in a third country, as well as their transparency and compatibility with those of a Member State;~~

~~3(g) early integration measures such as tailored support in accordance with the needs of third-country nationals and integration programmes focusing on education, language and other training such as civic orientation courses and professional guidance.~~

Add the following paragraph to Annex III (Scope of support):

**Article 2 (j): Early identification of victims of violence and torture upon people's arrival to an EU Member States and referral to specialized services .**

**Article 2 (k): Delivery of qualified psycho-social and rehabilitation services to the victims of violence and torture.**

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9. The suggested categories of persons to not be included in this calculation (Annex 1, Article 3c) could be maintained.

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