

FROM DEVELOPMENT TO DETERRENCE?

Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)

Summary

On 14 June 2021, the EU Neighbourhood, Development and International Cooperation Instrument (NDICI) was adopted with a budget of €79.5bn, of which 10% is allocated to migration-related actions. 93% of NDICI funds must comply with Official Development Assistance (ODA) criteria. An Oxfam analysis of the ODA eligibility of NDICI funded migration projects in Libya, Tunisia and Niger finds that a significant portion of the projects contain elements that may limit ODA eligibility and appear to prioritise the EU's domestic migration concerns over development objectives. Moreover, insufficient documentation hinders the monitoring and democratic scrutiny needed to ensure NDICI migration programming meets the EU's legal obligations for development spending.

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This paper was written by Zina Weisner and Stephanie Pope, with guidance from the research consultant Julia Verheul. It is part of a series of papers written to inform public debate on development and humanitarian policy issues.

For further information on the issues raised in this paper please email advocacy@oxfaminternational.org

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The information in this publication is correct at the time of going to press.

Published by Oxfam GB for Oxfam International under in September 2023.

DOI: 10.21201/2023.621536

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SUMMARY

On 14 June 2021, the European Union (EU) Neighbourhood, Development and International Cooperation Instrument (NDICI) was adopted, with an overall allocation of €79.5bn in EU development funding. For the first time, the EU allocated roughly 10% of this funding to migration-related actions.

Simultaneously, the Regulation states that 93% of NDICI funds must comply with the criteria for Official Development Assistance (ODA) established by the Organisation for Economic Co-operation and Development (OECD),¹ while the 2009 Treaty on the Functioning of the European Union (TFEU) states that 'Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty'.²

Amid growing concerns over the integrity of ODA when it is (mis)used to address donor countries' domestic migration concerns rather than development objectives benefiting the recipient country, the OECD recently published criteria for assessing the ODA eligibility of migration activities. It also identified risk categories among migration actions in terms of undermining ODA integrity:

- return and reintegration programmes;
- countering irregular migration, including border management and the fight against migrant smuggling and human trafficking;
- and rendering financing conditional on migration control outcomes.

This study aims to contribute to an assessment of whether NDICI migration programming in these categories meets the EU's legal obligations for development spending and ODA eligibility criteria, and in doing so, increase transparency on specific migration aims and activities funded under the instrument, with a view to facilitating public and democratic scrutiny of the NDICI's 10% migration component.

The study develops a methodology for assessing the ODA eligibility of NDICI-funded migration actions based on the OECD's guiding principles and assessment criteria. It focuses on three country case studies – Niger, Libya and Tunisia – considered by the EU as key partner countries for migration cooperation. Conclusive assessments of the ODA eligibility of NDICI-funded migration actions are not possible, due to the NDICI's broad objectives, **vaguely formulated or limited information in regional programming documents, lack of publicly available procurement contracts**, as well as the early implementation stage.

The European Commission's use of funding from other instruments to cover non-ODA eligible parts of migration actions, Member State contributions through the Team Europe Initiatives (TEIs), and **the use of conditional and flexible funding mechanisms to incentivize recipient country's cooperation on EU migration objectives**, further complicate effective monitoring and

assessment of the NDICI's 93% ODA target and ODA eligibility of migration actions. These suggest that the EU is prioritizing its domestic migration concerns over development objectives.

The case studies shed light on the EU's current trajectory regarding development spending on migration. **More than one-third of the migration activities identified contain objectives and activities that could limit ODA eligibility, according to the OECD criteria.**

Moreover, **the EU currently prioritizes migration actions that the OECD considers a particular risk to the integrity of ODA**, such as migration and border management as well as return, over labour migration or regular pathways. Several funded actions, such as capacity building of border guards, border management and the fight against human smuggling, appear **incompatible with the requirement that the primary purpose of ODA is the promotion of economic development and welfare of developing countries.** Return and reintegration actions appear non-compliant with the requirement that ODA actions must align with partner countries' priorities and not be conditioned on their cooperation around return. NDICI-funded protection actions reveal **significant incoherence between EU migration and development policy**, such as in Libya, where non-ODA EU funds facilitate the interception of migrants who are returned to inhumane conditions, and EU development funds are in turn spent on improving these conditions or evacuating people from them.

The findings suggest that the NDICI's 10% migration component is a missed opportunity to harness the development advantages of migration, instead becoming a tool to mask EU migration control as development assistance if the EU continues its current trajectory. With the launch of the NDICI's midterm evaluation in May 2023, this is a crucial moment for the EU to enhance oversight and scrutiny of NDICI migration programming through effective monitoring, evaluation, and transparency for public and democratic scrutiny, to ensure that EU development funding is used for its proper purpose: the reduction and, in the long term, eradication of poverty.

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RECOMMENDATIONS

RECOMMENDATIONS TO THE EUROPEAN COMMISSION

Monitoring, midterm review and evaluations

- Similar to the database for projects funded under the EUTF, the Commission should create a **public database** of all NDICI projects managed across Commission DGs and services. This database should specify which (portion of) project budgets are intended to be ODA eligible, and which actions are considered to fall under the 7% non-ODA funding component. Projects previously funded under the EUTF which are to continue under the NDICI and TEIs using NDICI funding should also be included in the database.
- The Commission has the obligation to **regularly inform** the Parliament and the Council on NDICI-funded actions and to exchange information on a

regular basis with civil society.³ Published information should result in strengthening accountability and enhancing possibilities for public scrutiny, rather than merely increasing (external) communication about activities. EU institutions, CSOs, media and academics should therefore receive **adequate and public access to relevant information** such as programming documents, country assessments and projects under the NDICI's rapid response mechanism as well as the flexible incitative approach.⁴

- The Commission should provide the Parliament with an **equal level and detail of information** regarding NDICI migration spending as provided to the Council. All documents provided to the coordination group should be provided to the Parliament committees overseeing implementation of NDICI. For the geopolitical dialogues,⁵ Parliament should receive relevant preparatory documents with sufficient time and adequate detail to conduct effective scrutiny. The Commission should provide a follow-up to these exchanges, stating the extent to which the Parliament's recommendations have been taken into account.
- In line with the NDICI Regulation, the Commission should conduct **appropriate ex ante assessments** to determine the possible human rights implications and risks of actions, including impact assessments for actions and measures that are expected to have a significant impact on these rights.⁶ Given the heightened risks to the rights of migrants and refugees, the Commission should conduct such impact assessments and **develop corresponding risk management frameworks for migration-related actions**.
- In line with the obligation that NDICI funding must not support actions that may result in human rights violations in partner countries,⁷ the Commission should use this risk assessment to develop a **framework for mitigating measures and suspension** in cases of persistent human rights violations.
- The Commission's **midterm review** should pay particular attention to the OECD guidelines for migration-related activities and ODA eligibility criteria.
- The Commission's **annual report**⁸ should include detailed breakdowns of migration-related spending, including specific actions, equipment delivered and expected development enhancing results. This overview should include TEIs that involve NDICI funding. Relevant procurement contracts to verify the information provided should be published, or in the case of sensitive information shared confidentially with the Parliament and Council.
- Impact assessments, risk management frameworks and mitigating measures should be publicly accessible and include a strong focus on **gender** (including gender-disaggregated data in the sources used), as well as on the impact on vulnerable groups, and the specific needs of women, gender non-binary people and LGBTQIA+ individuals.

Future programming and implementation of the NDICI 10% migration component

- The Commission should proactively ensure that NDICI funding under the migration component **adheres to EU legal principles and relevant OECD**

criteria, most prominently that the promotion of economic development and welfare of a developing country must be the primary objective of EU development assistance, as enshrined in Article 208 of the TFEU and the OECD guidelines.

- The Commission should urge and support EU delegations to **work closely with governments and relevant national CSOs in partner countries when developing programming**, and specifically migration actions to be funded under the NDICI, to ensure country ownership and the prioritization of partner countries' interests.
- The Commission should engage proactively in discussions on how programmes in partner countries are developed, including consultations with local governments, NGOs, development agencies, and other stakeholders such as donors and programme participants, on **how to measure the results of development projects in the context of human mobility**. In particular, the practice of measuring programme outcomes by the number of people 'intercepted' along migratory routes should be scrutinised and reassessed. Projects and measurements should be flexible enough to adapt to changing circumstances in volatile environments.
- Migration activities financed by ODA that are not eligible according to the OECD guidelines should be suspended or adapted together with the partner country to ensure future eligibility. The Commission should **provide a timeline for the assessment of these projects**, with particular attention to **activities that intercept and return migrants**, as actions primarily aiming to restrict migration are excluded from ODA. An examination of the NDICI EU Support to Border Management Institutions in Libya and Tunisia project, which indirectly involves cooperation with the Libyan and Tunisian coastguards, should be prioritized.
- In order to provide more clarity for the Parliament and Council, the Commission should **publish a handbook for migration-related activities** under the NDICI Regulation. This should provide guidance for implementation and include working definitions for terms such as 'migration management', 'border management', 'development activities' and 'security for development activities' (following, for example, the approach of the EU Return Handbook).⁹
- In order to preserve ODA integrity and avoid the redirection of aid to donors' immediate migration interests,¹⁰ the **flexible incitative approach**¹¹ should only be used for protection activities in unforeseen circumstances or for increasing the budgets of programmes that are assessed to be fully in line with the OECD principles and ODA eligibility criteria.

RECOMMENDATIONS TO THE EUROPEAN PARLIAMENT

- The Parliament should request a **clear timeline from the Commission on all evaluations and monitoring reports**, indicating the stages at which the Parliament will be involved. In order to properly exercise scrutiny, the Parliament should also establish which committees (the Committee on Development, the Committee on Foreign Affairs, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) or the Committee on Budgetary

Control (CONT)) are involved in which consultations, monitoring activities and follow-up actions on projects under the 10% migration component.

- According to the NDICI Regulation, the Commission is obliged to evaluate the impact, outcomes and effectiveness of its actions in each area of intervention through **independent external evaluations** if requested by the Parliament or the Council.¹² For migration, the evaluations should be based on EU legal obligations, the OECD TWG's guidelines and ODA eligibility assessment criteria. The Parliament should request such an external evaluation on the NDICI's migration component.
- According to the Parliament's Rules of Procedure, CONT is responsible for the **control of the implementation of the budget** of the Union and of the European Development Fund (currently merged into the NDICI). To better scrutinize spending under the NDICI, CONT should request information and reports from the Court of Auditors on the ODA eligibility of NDICI-funded migration projects.
- The Parliament should request that the **coordination group for the migration component**, which is chaired by the Commission and includes two focal persons per Member State from the Ministry of Interior and the Ministry of Foreign Affairs, should also include Parliament representatives.
- According to the NDICI Regulation, the Commission should regularly inform the Parliament and Council and, upon request, have **exchanges of views** with them, including on the incentive-based approach.¹³ The Parliament should invite the Commission for such an exchange of views in response to the midterm evaluation and request information from OECD DAC on the eligibility of specific NDICI-funded migration projects.

RECOMMENDATIONS TO OECD DAC AND MONITORING BODIES

- In the coming year **a review of the ODA eligibility of projects reported by donors under the new migration code will be conducted** through the DAC Peer Reviews of European Development Cooperation. This review should pay particular attention to projects on the capacity building of immigration services and border management, the fight against smuggling and trafficking, as well as return and reintegration programmes. If the delivery of funds within an activity is subject to specific conditions on migration outcomes (e.g. provision of aid in exchange for readmission agreements), the OECD Development Cooperation Directorate should request a detailed description of the specific conditions, and request donors' ODA eligibility assessments for such activities. The results of the review should be publicized and made available to relevant Parliament committees as well as civil society.
- Based on this review, OECD DAC should issue **further guidance on the eligibility of actions under DAC code 15190** ('facilitation of orderly, safe, regular and responsible migration and mobility') to ensure it is not misused to report migration control projects as ODA.

- OECD DAC should **create a casebook of migration-related activities**, similar to the ODA Casebook on Conflict, Peace and Security Activities¹⁴ to clarify key terms and parameters, providing more information on the type of activities that are and are not ODA eligible.

NOTES

- ¹ ODA is defined by the OECD Development Assistance Committee (DAC) as government aid that promotes and specifically targets the economic development and welfare of developing countries. The DAC adopted ODA as the 'gold standard' of foreign aid in 1969 and it remains the main source of financing for development aid. Organisation for Economic Co-operation and Development (OECD). (2021). Official Development Assistance: What is ODA? Accessed 6 June 2023. <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/What-is-ODA.pdf>
- ² Official Journal of the EU. (9 May 2008). Treaty on the Functioning of the European Union, Article 208. Accessed 6 June 2023. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E208:EN:HTML>
- ³ See Article 8(12) and Article 8(14) of the NDICI Regulation.
- ⁴ See explanation in Section 1.1.
- ⁵ See Section 6 in Official Journal of the European Union. (2021). Declaration by the European Commission on a Geopolitical Dialogue, op. cit.
- ⁶ See Article 25(5) of the NDICI Regulation.
- ⁷ See Article 29 of the NDICI Regulation.
- ⁸ According to Article 41(4) of the NDICI Regulation, the Commission should examine the progress made in implementing the Instrument and, from 2022 onwards, submit an annual report to the European Parliament and to the Council on progress towards the achievement the Instrument's objectives by 30 November each year. This includes reporting on the ongoing activities, results delivered and effectiveness of the Regulation.
- ⁹ See European Union. (2015). Return Handbook: Annexes. Accessed 6 June 2023. https://ec.europa.eu/eurostat/cache/metadata/Annexes/migr_eil_esqrs_it_an1.pdf
- ¹⁰ Principle 2 of the DAC guiding principles and criteria for migration-related activities in ODA.
- ¹¹ See explanation in Section 1.1.
- ¹² See Article 42 of the NDICI Regulation.
- ¹³ See Article 8(12) of the NDICI Regulation.
- ¹⁴ See OECD DAC. (2017). ODA Casebook on Conflict, Peace and Security Activities. OECD. Accessed 6 June 2023. [https://one.oecd.org/document/DCD/DAC\(2017\)22/FINAL/en/pdf](https://one.oecd.org/document/DCD/DAC(2017)22/FINAL/en/pdf)

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