

# FROM DEVELOPMENT TO DETERRENCE?

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

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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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For further information on the issues raised in this paper please email [advocacy@oxfaminternational.org](mailto:advocacy@oxfaminternational.org)

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## CONTENTS

Summary.....	5
Recommendations .....	6
Recommendations to the European Commission .....	6
Recommendations to the European Parliament .....	8
Recommendations to OECD DAC and monitoring bodies.....	9
1. Introduction .....	10
The political context and EU financial instruments for external migration action .....	11
2. A closer look at the NDICI regulation .....	13
NDICI governance and implementation framework .....	13
NDICI objectives and ODA guidelines: compliance or redirection? .....	14
Sustainable development versus donors’ domestic concerns.....	15
Security for development or development for (border) security? .....	16
The European Commission: lack of clarity on ODA eligibility .....	17
3. Methodology: assessing the ODA eligibility of NDICI-funded migration activities .....	18
Step 1: Identifying migration-related actions.....	18
Step 2: The OECD migration risk categories.....	20
Step 3: Which factors limit the ODA eligibility of migration and border management activities? .....	20
4. Case studies: Niger, Libya and Tunisia .....	23
4.1 Niger .....	24
4.1.1 Overview of EU external action in Niger.....	24
4.1.2 NDICI-relevant programming for Niger.....	24
4.1.3 Migration-related actions in Niger falling under the regional MIP	25
4.1.4 Migration-related actions under the country MIP for Niger 2021– 2027.....	29
4.1.5 Conclusions .....	32
4.2 North Africa: Libya and Tunisia .....	34
4.2.1 Overview of EU external action in Libya and Tunisia .....	34
4.2.2 NDICI-relevant programming for Libya and Tunisia .....	34
4.2.3 Migration-related actions financed under the MCMP .....	35
4.2.4 Conclusions .....	42
5. Monitoring, transparency and external oversight of the NDICI.....	45
5.1 European Council oversight and Member State involvement.....	45
5.2 European Parliament oversight .....	46
6. Conclusions .....	48

Annexes.....	51
Annex 1: ODA-eligible migration-related activities.....	51
Annex 2: Breakdown of the MCMP priority area ‘Strengthening migration and asylum management’.....	53
Notes .....	54

# 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),<sup>1</sup> 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'.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

- 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,<sup>5</sup> 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.<sup>6</sup> 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,<sup>7</sup> 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**<sup>8</sup> 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).<sup>9</sup>
- In order to preserve ODA integrity and avoid the redirection of aid to donors' immediate migration interests,<sup>10</sup> the **flexible incitative approach**<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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 Activities<sup>14</sup> to clarify key terms and parameters, providing more information on the type of activities that are and are not ODA eligible.

# 1. INTRODUCTION

The Neighbourhood Development and International Cooperation Instrument (NDICI)<sup>15</sup> and the Multiannual Financial Framework (MFF) 2021–2027 were adopted against the backdrop of the EU’s increased focus on its asylum and migration policies beyond EU territory,<sup>16</sup> including ‘strengthening cooperation with countries of origin and transit’<sup>17</sup> and addressing migration situations in third countries, in part through using development funding. Guidance<sup>18</sup> on migration spending recently published by the OECD Development Assistance Committee (DAC) establishes that the key requirement for ODA eligibility is that a programme’s primary aim is promoting development in the recipient country, rather than addressing donors’ domestic migration concerns. As migration actions may benefit both donor and recipient countries, and given the lack of detail in relevant programming documents and the NDICI’s early implementation stage, it remains difficult to assess whether the EU’s legal obligations for development spending and ODA eligibility criteria are met in NDICI migration programming.

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This paper aims to shed light on the migration and border management activities that have been funded so far, and their compatibility with the OECD’s guidelines and ODA eligibility criteria, and the NDICI Regulation itself. In doing so, it addresses two questions:

1. What are the NDICI’s migration-related aims and which migration and border management activities are funded under the instrument?
2. Do these activities comply with the OECD’s ODA eligibility criteria and the principles for development assistance defined in the NDICI Regulation?

This study follows up on Oxfam’s previous research into the potential redirection of development funding for migration control purposes through an in-depth analysis of NDICI-funded projects on border management and migration control in northern and western Africa.<sup>19</sup> The aim is to contribute to increased transparency and strengthened democratic safeguards, to ensure that EU development funding is used for its proper purpose: to end poverty, build resilience, strengthen livelihoods and contribute to ending conflicts. With the launch of the midterm evaluation of NDICI in May 2023, this is a crucial moment to examine the use and impact of this EU funding instrument.

Given the NDICI’s early programming and implementation stage, this paper is based on in-depth qualitative analysis of the NDICI Regulation, multiannual indicative programmes (MIPs), annual or multiannual action plans available on the European Commission website, as well as interviews with nine

stakeholders.<sup>20</sup> The latter included four semi-structured interviews with representatives of the EU Commission and one semi-structured interview with a representative of the EU Parliament. Prior to the interviews, respondents were informed in writing, and in turn provided written assent, that the data gathered would be used only for research purposes, processed in compliance with relevant privacy regulations (i.e., the EU General Data Protection Regulation), pseudo-anonymised to protect respondents' identities and that interviews would not be recorded, though notes would be taken on key points.

The study analysed more than 25 programming documents published until May 2023 and provides in-depth analyses on EU funding in Niger, Libya and Tunisia. These countries have been at the forefront of the EU's external migration policy since the Valletta Summit in 2015.<sup>21</sup> They are considered key transit countries for migrants and refugees in the Sahel and North Africa according to the EU's 'whole of route' approach,<sup>22</sup> and are deemed central to implementing the external dimension of the New Pact on Migration and Asylum.<sup>23</sup>

## THE POLITICAL CONTEXT AND EU FINANCIAL INSTRUMENTS FOR EXTERNAL MIGRATION ACTION

At the Special European Council Summit on 9 February 2023 and the Council Summit on 23 March 2023, the European Council<sup>24</sup> reinstated its intention to regulate migratory movements outside of its own borders. Amid continued disagreements<sup>25</sup> between Member States<sup>26</sup> over the reform of the EU's domestic migration acquis,<sup>27</sup> Member States shifted the focus to the external dimension of EU migration policy, declaring plans to use development aid, trade policy and access to visas as 'leverage' over non-EU countries to cooperate on returns and readmissions.<sup>28</sup> Development instruments such as the NDICI are therefore considered tools to 'maximise the impact on the external dimension of migration, especially in the prevention of irregular migration'.<sup>29</sup>

While migration objectives have long been included in EU development cooperation and foreign policy aims,<sup>30</sup> the adoption of the EU Trust Fund for Africa (EUTF) in 2015 for the first time explicitly linked EU development aid to its migration management objectives. The EU formalized this approach with the 10% migration component in the NDICI, setting a specific funding target for this purpose. The MFF 2021–2027 also contains a specific heading devoted to migration and border management<sup>31</sup> for the first time, while the Council demanded increased references to migration in the new instrument's objectives.<sup>32</sup>

A further novelty is the Regulation's formal inclusion of a positive conditionality mechanism for migration, the 'flexible incitative approach'.<sup>33</sup> This implements the 'more for more'<sup>34</sup> principle included in the European Neighbourhood Policy under the MFF 2014–2020, whereby countries are rewarded for migration cooperation with additional funding. The mechanism

reflects the migration conditionality approach underlying EU third-country relations and lessons learned from the EUTF, where flexibility was recognized as one of the main strengths.<sup>35</sup> However, the regional analysis in Chapter 4 reveals that rendering development funding conditional on the EU's domestic migration interests does not necessarily comply with the requirement for ODA programmes to have the primary objective of promoting the economic development and welfare of developing countries.<sup>36</sup> Previous Oxfam research revealed this trend in the implementation of the EUTF, when the EU's objective of containing or reducing mobility overrode the potential benefits of human mobility for partner countries.

For example, measuring project success by a reduction or containment of human mobility in a region or along a migration route (e.g. number of intercepted migrants or reduction in border crossings), fails to consider the crucial role of human mobility in building resilience and livelihoods, such as when people are displaced by conflict or environmental degradation and move to safety with newly gained skills, as well as transfer of remittances.<sup>37</sup>

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## 2. A CLOSER LOOK AT THE NDICI REGULATION

### NDICI GOVERNANCE AND IMPLEMENTATION FRAMEWORK

The NDICI Regulation came into force on 14 June 2021 and applies retroactively from 1 January 2021. It combines 12 previous instruments and is currently the main tool for implementing EU development cooperation policy.<sup>38</sup> NDICI programming and implementation are led by the European Commission<sup>39</sup> and EU delegations. The lead Commission services involved are the Directorate Generals for Neighbourhood and Enlargement Negotiations (DG NEAR) and for International Partnerships (DG INTPA), and the Service for Foreign Policy Instruments (FPI), in cooperation with the European External Action Service (EEAS). DG INTPA oversees approximately 70% of the instrument, comprising all geographic programmes except the Neighbourhood (DG NEAR), and all thematic programmes except the Peace, Stability and Conflict Prevention (FPI) and the Rapid Response component (together with DG NEAR).<sup>40</sup> Member State agencies, international organizations and partner countries are involved in implementation through indirect management. The NDICI Regulation and the Team Europe Council Conclusions<sup>41</sup> promote joint programming as the preferred approach to country programming. The Team Europe Approach was added to the EU External Toolbox to increase the visibility of EU actions and combine resources for 'flagship projects'.<sup>42</sup>

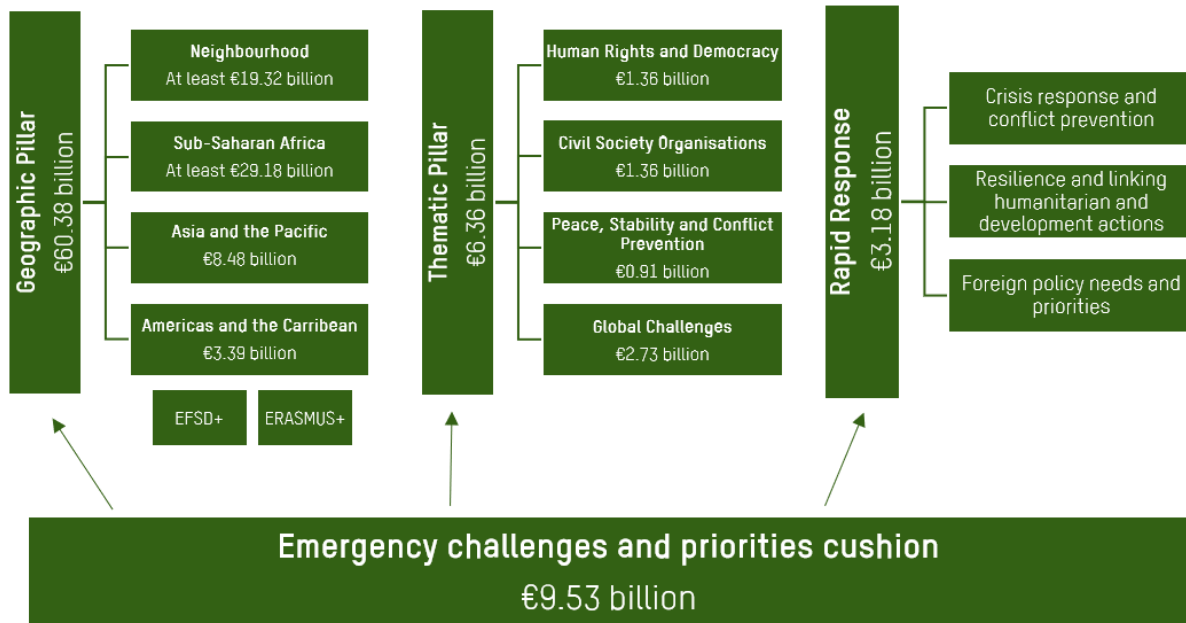
The instrument is influenced by the EU's aspiration to strengthen its position as a pivotal geopolitical actor,<sup>43</sup> meaning that its geopolitical goals and interests play an increasing role in its partnerships with countries to which it delivers ODA.<sup>44</sup> According to the Commission, the NDICI's migration component thus equips it 'with adequate tools to contribute to the implementation of the EU's policy priorities in the area of migration, complementing other relevant EU tools as well as those of EU Member States.'<sup>45</sup>

The geographical programmes receive the most funds (Figure 1), with an emphasis on establishing strategic partnerships with countries in the European Neighbourhood and Africa.<sup>46</sup> The strengthened geographic focus also means that EU delegations in partner countries play a greater role in decision-making on priorities and programme allocations.<sup>47</sup> Together with the thematic programmes, the geographical pillar represents the programmable part of NDICI. Programming is the process through which the EU defines its medium and long-term international cooperation priorities (in the case of NDICI for the period 2021–2027). According to the EU, this must include dialogue with partner countries, EU Member States and other stakeholders, such as civil society organizations (CSOs);<sup>48</sup> however, the

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latter is not always effective in practice due to, for example, limited information sharing.<sup>49</sup> Meanwhile, ‘rapid response actions’ aim to contribute to stability and conflict prevention in situations of ‘urgency and crisis’,<sup>50</sup> including those resulting from migratory flows and forced displacement. These require no programming and are implemented through the Commission’s adoption of ‘exceptional assistance measures’, ‘action plans’ and ‘individual measures’.<sup>51</sup> The NDICI also includes a cushion of unallocated funds to address unforeseen circumstances and new priorities, including actions related to migratory trends and forced displacement.<sup>52</sup>

Figure 1. Structure of the NDICI



Source: Based on European Commission. (n.d.).<sup>53</sup>

## NDICI OBJECTIVES AND ODA GUIDELINES: COMPLIANCE OR REDIRECTION?

The NDICI’s general objectives are specified in Article 3(1a) of the Regulation:

*to uphold and promote the Union’s values, principles and fundamental interests worldwide in order to pursue the objectives and principles of the Union’s external action, as laid down in Article 3(5) and Articles 8 and 21 TEU, thus contributing to the reduction and, in the long term, the eradication of poverty, consolidating, supporting and promoting democracy, the rule of law and respect for human rights, sustainable development and the fight against climate change and addressing irregular migration and forced displacement, including their root causes.*

Due to these objectives, the NDICI has a 93% ODA spending target,<sup>54</sup> meaning this proportion of its expenditure must comply with the Busan principles of effective development co-operation, including ownership of development priorities by developing countries, as well as the OECD principles and ODA eligibility criteria.<sup>55</sup> The Regulation also promulgates coherence with, and commitment to, international and European legislation, in particular the 2030 Agenda, the Paris Agreement and the European Consensus on Development.<sup>56</sup> Article 29 excludes support to activities that may result in the violation of human rights in partner countries. The Regulation simultaneously references EU strategic objectives, such as responding to 'Union foreign policy needs and priorities'.<sup>57</sup>

Migration is one of the NDICI's main objectives, a priority across all its pillars and 'should contribute to a coordinated, holistic and structured approach to migration'<sup>58</sup> that is 'coherent with and complementary to Union migration policy'.<sup>59</sup> Migration has thus been embedded in programming at the regional and country levels, particularly to contribute 'to the effective implementation of EU agreements and dialogues on migration with third countries by encouraging cooperation relying on a flexible incitative approach'.<sup>60</sup> These objectives highlight the inherent tension in an instrument designed to juggle the EU's interests and priorities with ODA principles of country ownership and developing countries' welfare.

## **SUSTAINABLE DEVELOPMENT VERSUS DONORS' DOMESTIC CONCERNS**

Having identified this growing tension between donors' migration objectives and long-term development objectives in ODA spending, the OECD DAC established the Temporary Working Group on Clarifying the ODA-eligibility of Migration-related Activities (TWG)<sup>61</sup> to develop ODA eligibility rules for migration-related expenditures and 'preserve the integrity of ODA'.<sup>62</sup> Due to disagreements between Member States on the criteria, specifically regarding the conditionality of financing to migration-control outcomes, border management and reintegration programmes,<sup>63</sup> the guidelines were approved a year later than expected in December 2022. The guidelines stipulate that activities pursuing primarily donors' interests are excluded from ODA.<sup>64</sup>

For cooperation on migration, even in the case of mutual benefits, the primary purpose must be the promotion of the economic development and welfare of a developing country, and the delivery of funds within an activity may not be subject to specific conditions on migration outcomes. To this end, an additional safeguard was introduced, excluding from ODA 'activities that intercept and return migrants with the main objective to restrict migration to provider countries'.<sup>65</sup> The TWG guidelines form the basis of this report's methodology for identifying factors that could limit the ODA eligibility of NDICI-funded migration actions (Chapter 3).

## SECURITY FOR DEVELOPMENT OR DEVELOPMENT FOR (BORDER) SECURITY?

Besides its migration objectives, the NDICI is to contribute to ‘preserving peace, preventing conflicts and strengthening international security’.<sup>66</sup> This can include ‘capacity building programmes in support of development and security for development, including training, mentoring and advice, as well as the provision of equipment, infrastructure improvements and services directly related to that assistance’.<sup>67</sup> Capacity building of military actors is to be provided in exceptional cases only, ‘where the objectives of the Instrument cannot be met by recourse to non-military actors’<sup>68</sup> and ‘where a consensus exists between the partner country concerned and the Union that military actors are key for preserving, establishing or re-establishing the conditions essential for sustainable development’.<sup>69</sup> However, NDICI funding:

*shall not be used to finance capacity building of military actors for purposes other than the delivery of development activities and security for development activities. In particular, it shall not be used to finance any of the following: (a) recurrent military expenditure; (b) the procurement of arms and ammunition, or any other equipment designed to deliver lethal force; (c) training which is designed to contribute specifically to the fighting capacity of the armed forces.*<sup>70</sup>

The NDICI may therefore only fund capacity building of military actors in exceptional cases and where the activities support sustainable development. While the Regulation does not define ‘security for development activities’, the EU has consistently underlined that ‘security is a precondition for development’.<sup>71</sup> Capacity building in support of security and development (CBSD) was therefore added as a new form of assistance to the Instrument contributing to Stability and Peace (IcSP) in 2017.<sup>72</sup>

As the IcSP was integrated into the NDICI, the OECD principles guiding ODA reporting on peace and security-related activities apply. They stipulate that military equipment or services, anti-terrorism activities and activities for the promotion of donors’ security interests are excluded from ODA,<sup>73</sup> except for supporting civilian oversight and democratic control of the military system. Training of partner countries’ military personnel, including in non-military matters, is generally not eligible, except for training under civilian oversight and with a clear developmental purpose for the benefit of civilians, for example on human rights and rule of law. Financing routine civil policing functions (i.e. pursuant to preventing and addressing criminal activities and promoting public safety) and the provision of related non-lethal equipment, or training, is eligible.<sup>74</sup>

This guidance forms the basis for assessing the ODA eligibility of capacity building of military or security forces related to migration and border management activities, and of EU missions’ and agencies’ involvement in NDICI-funded external migration action.



# THE EUROPEAN COMMISSION: LACK OF CLARITY ON ODA ELIGIBILITY

Spending for migration under the NDICI is programmed, implemented and overseen mainly by the Commission's DG INTPA and DG NEAR. Due to the recent OECD guidelines, DG NEAR and DG INTPA are currently assessing the ODA-compliance of NDICI-funded migration programmes relevant to the regions they oversee.<sup>75</sup> At the time of writing, the Commission could not provide precise information as to which NDICI-funded migration programmes (nor which portions of the project budgets for migration actions) are considered as ODA and which aren't. Interview respondents stated that there could be NDICI-funded migration actions that are not eligible, most prominently those related to border management or defence and security.<sup>76</sup> However, DG INTPA representatives have also declared publicly that all its projects, including migration-related ones, are 'DAC-able',<sup>77</sup> meaning they have received a purpose code<sup>78</sup> and are deemed as ODA-eligible by the Commission (however the OECD may still deem them non-eligible after review). Given the recent publication of the TWG's guidelines, the Commission has not applied them to the projects and is not obliged to apply them in reporting to the OECD until 2024.<sup>79</sup>

However, the Commission's apparent uncertainty over the ODA eligibility requirements for migration activities funded under the NDICI reflects the OECD's concerns over risks to the integrity of ODA when it comes to EU-funded migration activities, as this means numerous migration programmes are currently being financed and implemented in partner countries under EU development programming, without the overseeing institution's clarity on whether they pursue development goals or not.

According to the Commission, there are ongoing internal discussions over the NDICI funding's compliance with ODA criteria and corresponding assessments. While this study does not offer conclusive assessments of the ODA eligibility of migration actions, which will be conducted by the DAC,<sup>80</sup> it aims to contribute to filling this knowledge gap. The following chapters develop a methodology for identifying factors that could limit the ODA eligibility of NDICI-funded migration activities and applies them through the lens of three country case studies: Niger, Libya and Tunisia.

*According to the Commission, there are ongoing internal discussions over the NDICI funding's compliance with ODA criteria and corresponding assessments.*

# 3. METHODOLOGY: ASSESSING THE ODA ELIGIBILITY OF NDICI-FUNDED MIGRATION ACTIVITIES

Taking the EU commitment to implement the 2030 Agenda, the Sustainable Development Goals (SDGs) and the NDICI's 93% ODA spending target as a starting point, this study builds on previous attempts to categorize expenditure for asylum and migration to examine the ODA eligibility of NDICI-funded migration activities.<sup>81</sup>

## STEP 1: IDENTIFYING MIGRATION-RELATED ACTIONS

There is substantial ambiguity over the definition and classification of certain migration-related actions financed by the NDICI, due to the lack of working definitions or consistent terminology used by the Commission for terms such as 'migration management' and 'migration governance' in relevant programming documents. The NDICI Regulation states six aims for cooperation on migration and forced displacement (Box 1),<sup>82</sup> and its Annex includes a list of activities falling under these aims.

### Box 1. Migration-related aims of the NDICI

**Aim 1:** Ensuring access to international protection

**Aim 2:** Addressing the root causes of irregular migration and forced displacement

**Aim 3:** Enhancing border management and pursuing efforts to prevent irregular migration

**Aim 4:** Fighting against trafficking in human beings and migrant smuggling

**Aim 5:** Working on dignified and sustainable returns, readmission and reintegration

**Aim 6:** Engaging with diasporas and supporting legal migration pathways.

The NDICI also introduces a 'migration marker' which classifies activities to determine whether they contribute to the 10% spending target on migration and forced displacement.<sup>83</sup> It was adopted in October 2021 as an internal Commission note. Box 2 outlines how it classifies activities.<sup>84</sup>

## Box 2. Migration marker in the NDICI

0 = no migration relevant spending and thus 0% of the activity is contributing to the 10% spending target.

1 = migration is a significant objective of the activity and 40% of spending is counted as contributing to the 10% spending target.

2 = migration is the focus objective of the activity and 100% of spending is counted as contributing to the 10% spending target.

There is currently no public information on how the Commission's assessment is conducted in practice; however, to be considered for a migration marker, the action needs to have a specific migration-related objective, output and relevant indicators in relation to the intervention logic of the action.

The migration marker can be used to identify actions focused on migration (and border) management in the programming documents – those marked with migration as a 'significant' or 'principal' objective. While addressing the root causes of irregular migration and forced displacement is one of the NDICI's six migration aims, projects addressing the root causes of migration are usually not labelled with a migration marker.<sup>85</sup> The Commission also marks NDICI-funded migration projects with DAC purpose codes that are used by donors to report on their aid flows.<sup>86</sup> For example, the European Commission has coded actions that include migration and border management activities with DAC purpose codes 15190 on 'facilitation of orderly, safe, regular and responsible migration and mobility'; 15136 for 'support to countries' authorities for immigration affairs and services'; 151 for 'governance'; and 152 for 'conflict, peace, security'.<sup>87</sup>

To identify relevant migration-related activities for this study, those with a migration marker and/or at least one of the DAC codes above were taken into account. Some projects are not labelled with a migration marker but include migration-related activities and are therefore still marked with a relevant DAC code. This may happen if the action's migration component is not large enough (i.e., below 40% of the overall action) to fall under the Commission's migration marker coding. The Commission's coding system, however, is an internal tool designed to ascertain whether they are reaching their own 10% migration spending target, rather than a tool to identify all migration-related actions funded by NDICI.

As this study aims to provide a holistic overview of all migration-related actions in the three case study countries, it also identifies those actions the Commission deems as not contributing to the 10% migration spending target, but as financed by ODA.

## STEP 2: THE OECD MIGRATION RISK CATEGORIES

The preceding sections have shown how donors' domestic migration objectives have become more closely linked to development cooperation, which risks undermining the integrity of ODA. According to the OECD TWG, 'the challenge in the field of migration is that it is not always clear whether a programme primarily aims to promote development or address domestic concerns in provider countries'.<sup>88</sup> The TWG identified three types of migration activities where this challenge is particularly apparent and therefore the risk of undermining the integrity of ODA is particularly high:

- return and reintegration programmes;
- countering irregular migration (e.g. support for border management, the fight against migrant smuggling and the fight against trafficking in human beings); and
- rendering financing conditional on migration control outcomes.<sup>89</sup>

The OECD TWG further considers addressing the root causes of irregular migration' and engaging with diaspora as areas where it is particularly difficult to determine the main goal of the activity. However, this report focuses on the aforementioned three categories, since addressing root causes is an overarching and cross-cutting aim of numerous NDICI actions, including those without any specific migration-related activities, and therefore goes beyond the scope of this report. With regards to diaspora engagement, the OECD considers this a potential risk to ODA eligibility if funding is used for activities in donor countries. This does not concern NDICI actions as it is an external action instrument and therefore not relevant for the case studies in this report.

In the case studies, all migration-related actions with a migration marker or the DAC codes in Section 3.1 are listed to provide a full picture of the migration activities funded. Of these, those corresponding to one or more of the three risk categories above, thereby identified by the OECD DAC as posing a particular risk to the integrity of EU ODA, are analysed with regards to their ODA eligibility.

## STEP 3: WHICH FACTORS LIMIT THE ODA ELIGIBILITY OF MIGRATION AND BORDER MANAGEMENT ACTIVITIES?

The OECD DAC approved the TWG guidelines in December 2022. They include six 'overarching principles to guide ODA reporting on migration-related activities' and eight 'criteria for assessing the ODA eligibility of activities in the field of migration'. These principles and criteria have been integrated into the OECD's most recent Statistical Reporting Directives, which are used to assess donors' compliance with various international recommendations

for development cooperation.<sup>90</sup> The methodology developed for this report is based on these approved principles and criteria.

To help determine the ODA eligibility of any migration-related activity, the DAC-CSO Reference Group<sup>91</sup> recommended that the DAC agrees on a list of criteria based on the following guiding questions: What is the primary purpose of the activity? Does it rely on any conditions? Whose priorities are followed? Who benefits and what is the money spent on (safeguards for activities including military, police, border control or returns)?<sup>92</sup>

These CSO recommendations fed into the TWG guidance on the ODA eligibility of migration-related activities. Table 1 clusters the OECD’s overarching principles and the TWG’s specific criteria under these questions, to guide readers’ understanding of the key issues when assessing ODA eligibility.

Chapter 4 tests compliance or non-compliance with these principles and criteria for each migration action examined in the country case studies. The OECD principles and ODA eligibility criteria are considered to identify and highlight factors that may limit the ODA eligibility of the migration actions. When inconsistencies with the NDICI Regulation itself are identified, these are also indicated.

**Table 1. Criteria for assessing the ODA eligibility of migration-related activities**

<i>What purpose?</i>	
<b>Development as a primary purpose and focus on developing countries as the main benefit</b>	<b>Principle 1:</b> The main objective of the activity is the promotion of the economic development and welfare of developing countries.
<b>Main objective is not to restrict migration</b>	<p><b>Principle 5:</b> Activities that either promote safe and regular pathways for migration or that address irregular and unsafe migration, not promoting a provider country’s domestic migration agenda, and that protect people’s lives and human rights, qualify as ODA.</p> <p><b>Principle 6:</b> Activities that intercept and return migrants, or activities that support border authorities with the main objective to restrict migration to provider countries, are excluded from ODA.</p> <p><b>Criterion 4:</b> Costs for border, air and coastguard patrols whose main purpose is the control and protection of borders, when rescue of refugees is not the primary intention of this activity.<sup>93</sup></p>
<i>What conditions?</i>	
<b>No diversion of ODA towards donors’ immediate interests on migration</b>	<p><b>Principle 2:</b> There should be no diversion of ODA towards providers’ immediate interests on migration at the expense of long-term sustainable development.</p> <p><b>Principle 3:</b> While benefits to provider countries do not preclude ODA eligibility, development cooperation should not be used as a vehicle to promote the provider’s domestic migration agenda. The promotion of economic development and welfare of a developing country must come before any other goals. A primary goal can be identified as being fundamental in the design and expected impact of the activity, and which is an explicit goal of the activity. It may be selected by answering the question: ‘Would the activity have been undertaken without this goal?’</p> <p><b>Criterion 3:</b> To help identify the main objective – and hence facilitate the ODA-</p>

	<p>eligibility assessment – of projects with mutual benefits to provider and recipient countries, the expected development-enhancing results of the interventions as well as the projects’ objectives and respective results indicators should be considered. They can inform the extent to which the projects pursue domestic migration interests.</p> <p><b>Criterion 2:</b> If the delivery of funds within an activity is subject to specific conditions on migration outcomes, the funds are not reportable as ODA unless the conditions imposed primarily contribute to the promotion of the economic development and welfare of developing countries, and not primarily to the donor’s domestic migration concerns.</p>
<i>Whose priorities?</i>	
<p><b>ODA is aligned with development, humanitarian and human rights objectives and principles</b></p>	<p><b>Principle 4:</b> Migration-related activities included in ODA should comply with development, humanitarian and human rights objectives and principles, including the SDGs of the 2030 Agenda. They should generally be aligned with partner countries’ priorities and their overall development strategy. Activities that neglect the rights of forcibly displaced persons and migrants do not qualify as ODA.</p> <p><b>Criterion 1:</b> Projects which are not in line with applicable international law and applicable international frameworks for migrants and refugees, such as the Convention Relating to the Status of Refugees, the Global Compact for Migration and the Global Compact on Refugees, as well as the SDGs, are not eligible.</p>
<i>Who benefits and what is money spent on?</i>	
<p><b>Safeguards for capacity building for border guards/security forces</b></p>	<p><b>Criterion 4:</b> The boundary between ODA and non-ODA eligible activities in border management is determined based on their primary objective (see also Principle 3). Excluded from ODA are:</p> <p>Activities that support developing or developed countries’ border authorities with the main objective to restrict migration to the provider country.</p> <p>Training for border guards and building the capacity of border patrol administration, except in support of ODA-eligible types of activities.<sup>94</sup></p> <p>Border control projects – border checks and surveillance activities that are directly related to the army or lethal action of security forces, or that entail military-type border and territorial surveillance such as armed drones or kinetic patrolling.</p> <p>ODA rules in relation to the police:<sup>95</sup> Financing for civil policing functions that are routine (i.e. pursuant to preventing and addressing criminal activities and the promotion of public safety overall) are eligible for ODA.</p>
<p><b>Safeguards for working on returns, readmission and reintegration</b></p>	<p><b>Criterion 5:</b> Assistance to forced returns is excluded from ODA. Assistance to migrants for their safe, dignified, informed and voluntary return to their country of origin is eligible in the case of returns from another developing country.</p> <p><b>Criterion 6:</b> Reintegration programmes qualify as ODA if they primarily focus on the economic development and welfare of developing countries. Reintegration activities undertaken in countries of origin are in principle ODA-eligible irrespective of the status of returnees (forced or voluntary). Reintegration support that exclusively targets returnees from the provider country may be considered eligible only if it is demonstrated that it does not primarily aim to address the donor’s domestic migration concerns.</p>

Source: Author’s elaboration, based on OECD (2023).<sup>96</sup>

## 4. CASE STUDIES: NIGER, LIBYA AND TUNISIA

The analysis in the following case studies is based on the EU programming documents publicly available at the time of writing, and thereby covers programming concluded until May 2023 (the end of the research period). It does not provide an exhaustive analysis as programming is ongoing.

Programming can take the form of country, regional, and thematic multiannual indicative programmes (MIPs).<sup>97</sup> Additionally, the Commission adopts annual action plans setting out the implementation of these programmes. These broader, indicative programmes are transformed into Commission Implementing Decisions detailing the financing of action plans and programmes.

The implementing decisions' annexes are currently the most concrete documents in terms of recording specific projects and concomitant objectives, results, risks and indicators. They also specify the action's implementation modalities: direct management (EU funding is managed directly by the European Commission), shared management (the Commission and national authorities jointly manage the funding) or indirect management (funding is managed by partner organizations or other authorities inside or outside the EU).<sup>98</sup>

The programming documents also refer to Team Europe Initiatives (TEIs), which are EU-coordinated responses to address various challenges and constitute a form of joint programming, combining NDICI funding with direct funding from EU Member States.<sup>99</sup>

The following section analyses two regional MIPs, one regional thematic MIP, one country MIP and 12 Commission Implementing Decisions and their annexes (two for Niger, three for sub-Saharan Africa, two for Libya, one for Tunisia, three for the Multi-country Migration Programme for the Southern Neighbourhood (MCMP), and one for the Southern Neighbourhood). The annexes offer a description of what the EU terms 'actions': 16 include migration and/or border management-related actions, together comprising roughly 1% of overall NDICI funding, and are listed in the case studies.<sup>100</sup>

## 4.1 NIGER

### 4.1.1 OVERVIEW OF EU EXTERNAL ACTION IN NIGER

The EU considers Niger an important transit country for people migrating from West Africa to North Africa (particularly Libya and Algeria) and towards the EU, and thus a key country on the central Mediterranean migration route.<sup>101</sup> Previous EU funding for migration management in Niger and the region has been controversial since the establishment of the EUTF, due to several harmful consequences, such as undermining regional mobility and resilience.<sup>102</sup>

In July 2022, the Commission announced strengthened cooperation in the fight against trafficking of migrants and the launch of an operational partnership between the EU and Niger.<sup>103</sup> This partnership foresees new information and awareness campaigns on the risks of irregular migration and trafficking, strengthening EU–Niger cooperation through the EUTF-funded joint investigation team,<sup>104</sup> a working agreement between Frontex<sup>105</sup> and Niger, and the reinforcement of the Common Security and Defence Policy (CSDP) mission, EUCAP Sahel Niger.

NDICI funding is mentioned as complementary support to this partnership, exemplifying the interrelation of the EU's security, development, and migration interventions in Niger.

### 4.1.2 NDICI-RELEVANT PROGRAMMING FOR NIGER

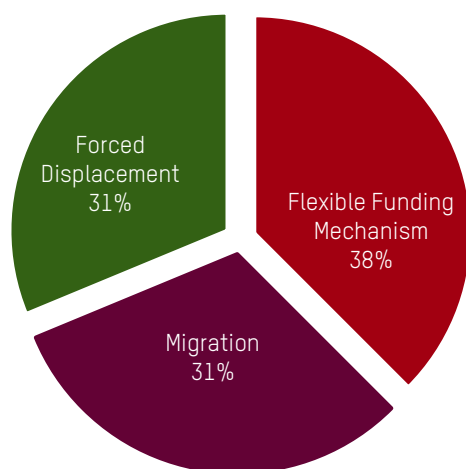
In the MIP for sub-Saharan Africa 2021–2027, Priority Area 6 targets 'migration, mobility, and forced displacement'<sup>106</sup> and makes up 16% (€1.6bn) of the overall MIP (making it the third-largest tranche, after support for the 'green transition' and 'sustainable growth and decent jobs').<sup>107</sup> This priority area constitutes the sub-Saharan Africa Regional Migration Support Programme (RMSP). The RMSP's objectives are to:

1. Strengthen migration management, policy and governance in sub-Saharan Africa;
2. Address protection and long-term needs and support durable solutions for forcibly displaced populations (refugees and internally displaced persons) and host communities; and
3. Strengthen EU migration partnerships and dialogue with relevant origin, transit, destination and/or host countries of the region through the implementation of a flexible funding mechanism.<sup>108</sup>

This mechanism makes up 38% (€600million) of Priority Area 6 (Figure 2). Support to the Emergency Transit Mechanism (ETM) to Niger and Rwanda also falls under the regional MIP; however, no specific programming documents are available for this.<sup>109</sup>



Figure 2. Budget allocation for Priority Area 6: migration, mobility, and forced displacement



Source: Author's diagram, based on European Commission (2020).<sup>110</sup>

### 4.1.3 MIGRATION-RELATED ACTIONS IN NIGER FALLING UNDER THE REGIONAL MIP

Table 2. Overview of migration-related actions in Niger falling under the regional MIP

<i>Action</i>	<i>Migration marker</i>	<i>DAC code</i>	<i>Budget</i>
<b>Action 1: Flexible mechanism for migration and forced displacement<sup>111</sup></b>	Principal objective	15190	West Africa: €105m  <b>Total SSA: €200m</b>
<b>Action 2: Peaceful and resilient borderlands<sup>112</sup></b>	Not targeted	15190 (10%), 152 (90%)	West Africa: €67m  <b>Total SSA: €125m</b>
<b>Action 3: Migrant Protection, Return and Reintegration Programme for Sub-Saharan Africa (MPRR)<sup>113</sup></b>	Principal objective	15190	West Africa: €144.5m  <b>Total SSA: €170m</b>
<b>Action 4: Migration and Mobility Dialogue</b>	Principal	15190,	West Africa:

support programme (MMD III) <sup>114</sup>	objective	15136	€9.5m
			<b>Total SSA: €22m</b>
<b>Action 5: Support to Free Movement of Persons and Migration in West Africa Phase II (FMM West Africa II)<sup>115</sup></b>	Principal objective	15190	€34m
<b>Total</b>			<b>€551m</b>

### Action 1: Flexible mechanism for migration and forced displacement

Based on Article 20 of the NDICI Regulation, the flexible mechanism fulfils some of the previous flexible-funding capacity of the EUTF by financing country-specific actions. It aims to maximize 'EU leverage in migration discussions vis-à-vis sub-Saharan African counterparts, based on a flexible and incentives-based approach while also respecting policy coherence for development as well as foreign policy objectives of the Union'.<sup>116</sup> To implement this approach the Commission, together with Member States, will assess partner countries according to, among other things:

- willingness to engage in fighting against migrant smuggling and trafficking in human beings;
- efforts to host migrants and/or displaced people;
- reinforcing capacities on migration management and governance, including on management of forced displacement, in the context of their partnership with the EU;
- showing a substantial and sustained cooperation with the EU and its Member States on return, readmission and sustainable reintegration;
- willingness to cooperate with the EU and its Member States to support well-managed legal migration or the implementation of the Global Compact on Refugees.<sup>117</sup>

*Objectives and activities:* The action aims to strengthen partner countries' cooperation with the EU on migration and forced displacement and to 'support partner countries' national and sub-national capacities to tackle migration and/or forced displacement challenges identified in migration dialogues with the EU'.<sup>118</sup> The activities indicated cover the full range of the NDICI's six migration aims.<sup>119</sup> Regarding border management, 'irregular migration is [to be] discouraged and prevented',<sup>120</sup> by conducting information and awareness-raising campaigns; support for developing legal frameworks, policies, strategies and action plans; and building the operational capacity of law enforcement, the judiciary and border management. Specific activities include technical assistance and capacity building for institutions and agencies responsible for migration and border management, on data gathering, information sharing and implementing procedures ensuring the readmission of irregular migrants, as well as the 'provision of relevant tools, equipment and/or infrastructure to government offices and border management posts'.<sup>121</sup>

*ODA eligibility:* Due to the projects' broad aims and a lack of information on country-specific actions, as well as the factors determining whether a country's funding will be topped up (which, according to the Commission, is not public information<sup>122</sup>), conclusions can only be hypothetical. Most of the activities listed are indicative, meaning that they may differ from those eventually implemented. Some mention the funding of equipment and/or infrastructure of border management posts, without specifying the type of equipment and the recipient.

According to Criterion 4,<sup>123</sup> this may limit ODA eligibility, as military-type border and territorial surveillance is excluded. Criterion 3, stipulating that development cooperation should not be used as a vehicle to promote donors' domestic migration agenda, would limit this action's eligibility, for example if assistance were rendered conditional on returns and readmissions.

Furthermore, under Criterion 2, making assistance conditional upon partner country cooperation on migration outcomes is not ODA eligible, unless the conditions primarily contribute to the promotion of the economic development and welfare of developing countries, and not primarily to the donor's domestic migration concerns. The rationale for this action is clear in its aim to 'provide incentives for constructive cooperation between partner countries and the EU, including on sensitive issues such as return, readmission and reintegration'.<sup>124</sup> The rationale thus appears to promote a migration agenda advanced by the EU rather than a development strategy advanced by partner countries.

For example, it is unclear how cooperation on returns is aligned with Niger's own priorities and development strategy (Principle 3). Most developing countries do not have a strong policy preference for readmitting returned nationals and would rather, for example, increase cooperation with the diaspora or create legal migration channels, suggesting return cooperation has limited ODA eligibility.<sup>125</sup>

Furthermore, the action includes a provision stating that some activities may be implemented 'in complementarity with dedicated funding from DG HOME',<sup>126</sup> indicating that ODA eligibility requirements may be circumvented through the use of funding instruments without an ODA commitment, and which prioritize the EU's justice and home affairs objectives. This highlights the increasing complexity of EU external funding, which threatens to dilute development spending and thereby undermine the integrity of ODA.

## **Action 2: Peaceful and resilient borderlands**

This action intends to address causes of instability and conflict and to contribute to strengthened capacities on conflict prevention and mitigation by cross-border communities, as well as enabling the economic recovery and strengthening the resilience and social cohesion of these territories. Niger falls within the Lake Chad window for this action.

*Objectives and activities:* While the overall objective is to reduce the impact of local conflict in borderland areas, specific aims include to 'improve the capacities of actors (local and national) in integrated border management and in security and social cohesion in the border areas of concern',<sup>127</sup>

*The rationale thus appears to promote a migration agenda advanced by the EU rather than a development strategy advanced by partner countries.*

exchange of information and cross-border cooperation mechanisms between security and border management actors, and support for strengthening state presence in border areas by the construction and equipment of border posts.

*ODA eligibility:* This action is broadly focused on peace and security, but also includes border management aims. While not labelled with a migration marker, it aims to contribute to DAC code 15190 by 10%. As activities that support the rule of law are ODA eligible, this action is in line with the OECD principles, as it aims to strengthen state presence in border areas in general rather than with the sole aim of restricting migration. According to the OECD criteria, financing for routine civil policing functions ‘pursuant to preventing and addressing criminal activities and the promotion of public safety’<sup>128</sup> are ODA eligible.

However, eligibility could be limited by the type of security actors supported and type of equipment delivered. This information is not specified in the programme description and may be part of procurement contracts with service providers that are not publicly available. Moreover, according to a 2021 report on the gendered impacts of migration in Niger by UN Women, 51% of physical abuse against migrant women in the desert from Niger to Libya is perpetrated by security forces, police and military, and another 10% by immigration officials and border guards.<sup>129</sup>

Therefore, detailed *ex ante* gender impact assessments taking into account gender-disaggregated data are necessary to assess whether increasing the state presence and improving the capacities of specific state and security actors in border regions are in line with the NDICI’s rights-based approach and the principles of ‘do no harm’ and ‘leaving no one behind’ (Article 8(2) of the NDICI Regulation), as well as Article 29 of the NDICI Regulation, which prohibits the funding of activities that could lead to human rights violations in partner countries.

### **Action 3: Migrant Protection, Return and Reintegration Programme for Sub-Saharan Africa (MPRR)**

This action follows and replaces the EU-IOM Joint Initiative on Migrant Protection and Reintegration, established in 2016 and initially funded by the EUTF.

*Objectives and activities:* The action aims to contribute to the protection of stranded and vulnerable migrants within sub-Saharan Africa, and support assisted voluntary return and sustainable reintegration for returnees in the region. The protection component also includes humanitarian rescue operations in the desert. However, protection is the smallest component, compared to return and reintegration.<sup>130</sup>

*ODA eligibility:* According to Criterion 5, assistance to migrants for their safe, dignified, informed and voluntary return to their country of origin is eligible in the case of returns from another developing country. Furthermore, under Criterion 6, reintegration programmes qualify as ODA if they primarily focus on the economic development and welfare of developing countries and if they do not primarily aim to address the donor’s domestic migration concerns. The latter would be the case, for example, if access to

programmes is specifically offered as an incentive to leave the donor country. As this action focuses on returns from one developing country to another, this concern does not apply.

However, the programming documents shed light on this action's objective to restrict migration toward the EU, by offering incentives for migrants stranded in countries of transit (partly due to harsher border controls)<sup>131</sup> to return to their countries of origin.

First, the action is to focus on 'countries relevant for Atlantic/Western and Central Mediterranean [migratory] routes'<sup>132</sup> routes to the EU. Second, the action may be complemented by funding under Action 1 to finance institution and capacity building for national and local authorities for managing return and readmission.<sup>133</sup> This will be 'done according to the specific criteria and rules as laid out in the flexible mechanism, including a constructive and effective dialogue and/or cooperation on migration with the EU'.<sup>134</sup> The programming document is therefore clear that certain countries will be 'rewarded' for cooperating with the EU on migration. Conversely, this funding is not available to countries who do not cooperate.

This could limit the action's ODA eligibility under Criterion 2, that funding should not be conditional on migration control outcomes. Furthermore, while it may be in partner countries' interests to receive assistance for reintegrating returned nationals through livelihood assistance, job creation, and so on, the preceding EU-IOM Joint Initiative 'faced challenges in the fields of ownership and capacity building of national authorities'.<sup>135</sup>

It is unclear how the current project takes this into account, which suggests this action's ODA eligibility could be limited under Principle 4, which requires alignment with partner countries' own priorities and development strategy.

*The programming document is therefore clear that certain countries will be 'rewarded' for cooperating with the EU on migration. Conversely, this funding is not available to countries who do not cooperate.*

#### **4.1.4 MIGRATION-RELATED ACTIONS UNDER THE COUNTRY MIP FOR NIGER 2021–2027**

The country MIP for Niger 2021–2027 and its annual action plans represent country-specific programming and budget support, with a focus on peace and governance, supporting a green and digital economy, youth and the 'multidimensional management of migration'.<sup>136</sup> While the latter is not further defined, it indicates the mainstreaming of migration in this MIP, with migration and border management addressed under the 'Governance' and 'Peace and security' priority areas. The MIP includes an indicative budget of €503m for 2021–2024, with 38% (€192m) allocated to Priority 1 (Governance).

To date, two actions financed under the country MIP address migration as a significant objective. Action 8 targets security in border regions broadly but does not include migration management objectives (Table 3).

**Table 3. Overview of migration-related actions under the country MIP for Niger**

<i>Action</i>	<i>Migration marker</i>	<i>DAC code</i>	<i>Budget</i>
<b>Action 6: State and Resilience Building Contract (SRBC)<sup>137</sup></b>	Significant objective	151 (Governance), 152 (Conflict, peace and security)	€195m
<b>Action 7: Nexus – Trois frontières<sup>138</sup></b>	Significant objective	151 (Governance): 23% 152 (Conflict, peace and security): 20%	€50m
<b>Action 8: Support for the territorial network of internal security forces in Niger</b>	Not targeted	151 (Governance): 40% 152 (Conflict, peace and security): 60%	€25m
<b>Total</b>			<b>€270m</b>

### **Action 6: State and Resilience Building Contract (SRBC)**

This action represents the EU’s budget support to Niger, constituting direct transfers to the national treasury.<sup>139</sup> Contributing parts of EU development assistance directly to partner countries’ budgets aims to better align support with country policies and reduce the burden of multiple, fragmented aid projects.<sup>140</sup> The SRBC’s very broadly stated aim is to help the government ‘eradicate poverty and reduce inequalities’,<sup>141</sup> with migration as a significant objective.

*Objectives and activities:* All migration-related actions are to work towards a strategic partnership comprising the ETM, capacity building to manage irregular migration and forced displacement (mainly through technical assistance to the Ministry of Interior for security sector governance and border management) and to combat migrant smuggling networks, with the support of Frontex and the European Agency for Asylum (EUAA); to improve cooperation on readmission with Niger; and to strengthen legal migration mechanisms in the Economic Community of West African States (ECOWAS) region.<sup>142</sup> The programming document is vague on specific objectives, merely stating that ‘migration management is strengthened’<sup>143</sup> including through the ‘continuation of migration management policies and the fight against irregular migration and trafficking networks’.<sup>144</sup>

*ODA eligibility:* The programming documents’ vague wording and the lack of publicly available procurement contracts (detailing the type and amount of assistance/equipment delivered to which actor) make assessments of ODA eligibility difficult. Based on the limited information available, most of this action’s objectives address development as a primary purpose (e.g. the fight against hunger and access to quality education) and in collaboration with the Nigérien government, as budget support fosters partner countries’ ownership to a larger extent than other funding modalities.<sup>145</sup> However,

there is no information on whether the assistance to security sector governance entails technical support or the delivery of equipment, merely referencing wider 'security sector reform'<sup>146</sup> and technical assistance to the Interior Ministry for security sector governance and migration/border management.<sup>147</sup> These factors could limit ODA eligibility under Criterion 4 if the primary objective of the support is restricting migration to the EU, while the financing of military equipment or services is generally excluded from ODA reporting. Technical cooperation is only eligible for ODA when it is provided to government ministries and excludes military actors.<sup>148</sup>

### **Action 7: Nexus – Trois frontières**

This action targets border areas and regions 'most likely to host internally displaced persons and refugees'<sup>149</sup> aiming to contribute to the stability, social cohesion and sustainable and inclusive development for populations living in conditions of vulnerability. This approach is to contribute to local governance and managing forced displacement and irregular migration; the fight against trafficking networks (migrants, weapons, drugs, etc.); and border management, complementing the work of EUAA and the joint work between EUCAP Sahel Niger and Frontex.

*Outputs and activities:* The action aims to improve local governance and the return of state presence and services in the targeted regions; resume inclusive economic life; strengthen the functioning and capacities of internal security management systems; and improve the territorial control and mobility capacities of the internal security forces (police, gendarmerie and national guard). Support to the internal security forces includes acquiring and delivering equipment for mobility (e.g. vehicles), protection, and communication (excluding lethal equipment and ammunition). The activities will be carried out in collaboration with EUCAP Sahel Niger, with no details provided on the nature of this collaboration.

*ODA eligibility:* According to the ODA rules in relation to the police, work with civilian law enforcement actors is ODA eligible when targeting routine civil policing functions (i.e. to prevent and address criminal activities and promote public safety, excluding training in counter-subversion methods, suppression of political dissidence, or intelligence gathering on political activities).<sup>150</sup>

As this activity centres on conflict prevention, stability and local resilience with a clear developmental purpose ('the resumption of economic life', 'access to markets', 'improvement of living conditions of rural populations', 'protection of natural resources') it appears compatible with ODA eligibility criteria. While aims to restrict migration are not explicit in the programming document, the collaboration with EUCAP Sahel Niger highlights the overlap between security and development initiatives.

## 4.1.5 CONCLUSIONS

DG INTPA's Strategic Plan 2020–2024 states that 'In its external dimension, the EU approach is fully in line with the 2030 Agenda and its SDGs, especially SDG 10, with the target on facilitating orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies ... also covering refugees, Internally Displaced Persons (IDPs) and other forcibly displaced persons.'<sup>151</sup> The analysis of migration-related projects overseen by DG INTPA in Niger tells a different story, as **three of the five projects assessed in depth (or three out of the eight projects identified in total) included factors limiting the eligibility for ODA according to OECD principles and ODA eligibility criteria.**

*Three of the five projects assessed in depth (or three out of the eight projects identified in total) included factors limiting the eligibility for ODA according to OECD principles and ODA eligibility criteria.*

The analysis is limited by the very broad wording of programming documents and the frequent lack of information on specific activities implemented or relevant procurement contracts, which hinders external scrutiny of NDICI-funded migration actions. However, several conclusions can be drawn from the available information.

Action 1 (the flexible mechanism for migration and forced displacement) represents a large part of the MIP for sub-Saharan Africa and especially for West Africa. If it relies on a country's 'performance' on migration management measured by efforts to stem irregular migration or cooperating on return and readmission, this part of the funding would not comply with the ODA guidelines (such country assessments are not publicly available). In fact, managing migration does not appear to be a major priority for the national authorities in Niger's development strategy, showing clear tensions with Principle 4 ('alignment with partner countries' own priorities').<sup>152</sup>

Moreover, the findings show that three actions focus on migration management overall (Actions 1, 4 and 6), three on peace and security, including border security (Actions 2, 7 and 8), one on return and reintegration (Action 3) and one on supporting legal migration (Action 5), indicating the EU currently prioritizes migration management and border security over legal pathways in its development assistance.

All of the regional actions (Actions 1 to 5) are marked with the DAC code 15190 ('facilitating safe, orderly and regular migration'). However, no (regional) project to date supports legal pathways from sub-Saharan Africa to Europe (such as Talent Partnerships<sup>153</sup> or labour migration initiatives), although this is mentioned as an expected result in the MIP: 'Result 1.6: Legal migration and mobility between Africa and the European Union, as well as within and outside of Africa is well managed and strengthened.'<sup>154</sup> Within Africa, the EU recognizes the importance of regional and cross-border mobility for people in the border areas of the region as a source of development opportunities and resilience against risks through Action 5 (support to free movement in West Africa).<sup>155</sup> Furthermore, the MPRR (Action 3) working on voluntary returns for migrants stranded in transit countries in Africa is labelled as facilitating safe and regular migration; however, return programmes can be interpreted as migration restriction to the EU rather than as facilitating safe migration.

*Furthermore, the MPRR (Action 3) working on voluntary returns for migrants stranded in transit countries in Africa is labelled as facilitating safe and regular migration; however, return programmes can be interpreted as migration restriction to the EU rather than as facilitating safe migration.*



Migration-related development cooperation by the EU in Niger (and West Africa overall), while including protection and resilience-related elements, is largely focused on strengthening security in border regions, and controlling and containing potential migration toward the EU through anti-smuggling/anti-trafficking and return programmes. Returning to the OECD's guiding question of the primary goal of donors' domestic migration concerns versus development objectives, the activities analysed in Niger suggest a shift away from development aims benefiting Niger towards the EU's domestic migration objectives, due to Niger's location on the central Mediterranean migration route.

## 4.2 NORTH AFRICA: LIBYA AND TUNISIA

### 4.2.1 OVERVIEW OF EU EXTERNAL ACTION IN LIBYA AND TUNISIA

The EU considers Libya a key country along the central Mediterranean migration route and has therefore provided significant funding and resources to 'prevent irregular migration upstream, strengthen border protection, counter migrant smuggling and trafficking networks, and foster returns.'<sup>156</sup> Libya was one of the largest recipients of EUTF funding, with substantial funds allocated to migration containment and control.<sup>157</sup>

The February 2017 Memorandum of Understanding between Libya and Italy provides funding and equipment for Libyan authorities to control their borders, with a commitment by the EU to provide complementary funding. For example, in February 2023 the EU handed over five vessels to the Libyan Coast Guard under the EUTF.<sup>158</sup>

The EU has similarly strengthened its cooperation with Tunisia on migration and border management in recent years since the conclusion of a Mobility Partnership in 2014. Tunisia has received support from the EUTF that currently amounts to €93.5m.<sup>159</sup> This cooperation was further strengthened following increased sea arrivals from Tunisia to Italy since 2017.<sup>160</sup> Tunisia has become the main country of departure for people arriving in Italy, partly due to the worsening human rights situation in Libya.<sup>161</sup>

However, the human rights situation for migrants from sub-Saharan countries has also been deteriorating in Tunisia,<sup>162</sup> and it is unclear how long-term NDICI programming may adapt to such changing contexts.

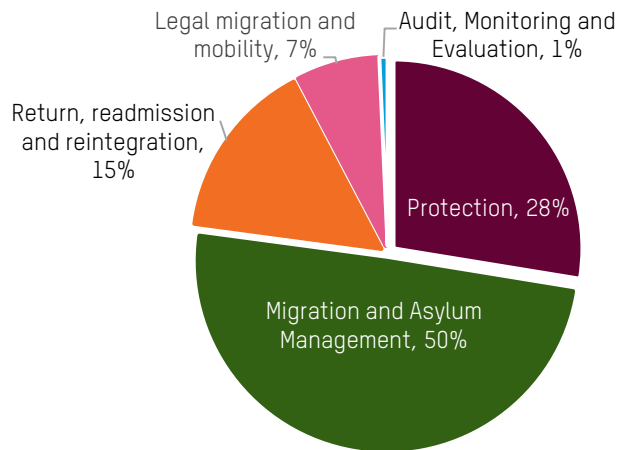
### 4.2.2 NDICI-RELEVANT PROGRAMMING FOR LIBYA AND TUNISIA

Due to the unstable political situation in Libya, since 2017 the EU's development cooperation with the country has been planned through annual Special Measures, instead of multiannual programming.<sup>163</sup> The country MIP for Tunisia is not yet adopted,<sup>164</sup> but two regional programme documents guide cooperation with Libya and Tunisia: the MIP for the Southern Neighbourhood 2021–2027<sup>165</sup> and the Multi-country Migration Programme for the Southern Neighbourhood (MCMP).<sup>166</sup>

The MIP for the Southern Neighbourhood does not include individual migration actions due to the separate MCMP, which covers actions for migration and mobility. The MCMP specifies four priority areas, with the budget allocation focusing on migration and asylum management as opposed to protection, return or legal migration (Figure 3).

*The EU considers Libya a key country along the central Mediterranean migration route and has therefore provided significant funding and resources to 'prevent irregular migration upstream, strengthen border protection, counter migrant smuggling and trafficking networks, and foster returns.'*

**Figure 3. Budget allocation in the MCMP**



Source: Author's diagram, based on the MCMP

The MCMP's indicative budget breakdown for 2021–2024 is €573m and it specifies the following activities under 'migration and asylum management':<sup>167</sup>

1. promote the development and implementation of policy, legal and regulatory frameworks;
2. support relevant migration and asylum authorities; build the capacity of border and coastguard authorities and search and rescue (SAR) capacities;
3. awareness raising on the risks of, and alternatives to, irregular migration; and
4. increased cooperation in the prevention of, and fight against, smuggling of migrants and trafficking in human beings.<sup>168</sup>

The MCMP relies on the flexible incitative approach, meaning certain countries may receive additional funding, 'encouraging relevant origin, transit, destination and/or host countries ... to better manage migration and/or forced displacement', 'adopting in these areas innovative policies that would merit further support' and 'improving or expanding their cooperation with the EU on migration, mobility, and forced displacement'.<sup>169</sup> The MCMP finances annual action plans, with seven actions targeting Libya and Tunisia discussed for 2021–2022 below.<sup>170</sup>

### **4.2.3 MIGRATION-RELATED ACTIONS FINANCED UNDER THE MCMP**

**Table 4. Overview of migration-related actions financed under the MCMP**

<i>Action</i>	<i>Migration marker</i>	<i>DAC code</i>	<i>Budget</i>
<b>Action 1: Increasing protection and resilience of migrants, forcibly displaced persons and host communities in Libya</b> <sup>171</sup>	Principal objective	15190 (65%), 72010 (Material relief assistance and services, 15%), 12220 (Basic healthcare, 20%)	€55m
<b>Action 2: EU support to border management institutions in Libya and Tunisia</b> <sup>172</sup>	Principal objective	15190 (100%)	€45m (€20m for Libya, €25m for Tunisia)
<b>Action 3: Supporting sustainable protection, return and reintegration in North Africa</b> <sup>173</sup>	Principal objective	15190 (100%)	€60m  (€25m for Libya) <sup>174</sup>
<b>Action 4: Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in North Africa (THAMM III)</b> <sup>175</sup>	Principal objective	15190 (100%)	€5m
<b>Action 5: Support to cross-border cooperation and integrated border management in North Africa</b> <sup>176</sup>	Principal objective	15190 (100%)	Total: €7m  (€6m from EU)
<b>Action 6: Enhancing international police cooperation against migrant smuggling in North Africa</b> <sup>177</sup>	Principal objective	15190 (100%)	Total: €10.5m  (€10m from EU; €0.5m from INTERPOL)
<b>Action 7: EU support to legal migration, mobility and skills partnerships with North African countries</b> <sup>178</sup>	Principal objective	15190 (100%)	Total: €23m  (€18m from EU; €5m from Germany)
<b>Action 8: Support to the protection and economic and social (re)integration of Tunisian returnees, displaced populations and host communities in Tunisia and Morocco (EDMEJ)</b> <sup>179</sup>	Principal objective	15190 (100%)	Total: €17m  EU: €14m Germany: €2m Italy: €1m
<b>Total</b>			<b>€222.5m</b>

The analysis of ODA eligibility below focuses on projects involving activities identified by the TWG as risk categories among ODA-funded migration actions: return and reintegration programmes, countering irregular migration (i.e. through support for border management and the fight against migrant smuggling and trafficking), and financing conditional on migration control outcomes. Table 4 outlines the actions financed by the MCMP that include such aims and activities.

## **Action 2: EU support to border management institutions in Libya and Tunisia**

This action has two components for Libya: allocating €12m for the establishment of a Border Guard Training Academy and €8m to upgrade the Maritime Rescue Coordination Centre (MRCC). This is in line with previous commitments under the Support to Integrated Border and Migration Management in Libya (SIBMMIL) project Phase I and II, implemented by the Italian Ministry of Interior under the EUTF at a cost of €57.2m, which established the MRCC. It aims to develop an intensive coaching programme building on the additional assets delivered under SIBMMIL. It is unclear whether these 'operational' 180 and 'naval' 181 assets are the boats delivered to the Libyan Coast Guard (LCG) in February 2023.<sup>182</sup>

The Tunisia component (€25m) aims to improve the Tunisian Garde Nationale Maritime's training infrastructure as well as establish a MRCC and a fully operational integrated surveillance system along the Tunisian coast. A feasibility study for the latter was conducted within the EUTF Border Management in the Maghreb Programme (BMP) implemented by the International Centre for Migration Policy Development (ICMPD) at a cost of €30m.<sup>183</sup>

*Objectives and activities:* The first Libya component includes equipment and implementing training courses on human rights and non-refoulement standards. The second component plans to improve the MRCC's performance through refurbishing the physical infrastructure, providing training and additional (unspecified) equipment for SAR operations, and introducing standard operating procedures in line with international standards. The rationale accompanying these activities states that, 'then Libya's ability to live up to its international SAR obligations and cooperation with neighbouring countries will be enhanced and more lives saved'.<sup>184</sup>

The first two objectives and activities in Tunisia are similar: improving the Tunisian Garde Nationale Maritime's training infrastructure and establishing an operational MRCC. A further objective is completing the coastal surveillance system and training staff to use the installed equipment.

*ODA eligibility:* According to Criterion 4, ODA cannot be used to fund border checks and border surveillance activities that are directly related to the army or lethal action of security forces. The LCG is part of the Libyan Navy and thus part of the Ministry of Defence. However, for the purpose of ODA reporting, coastguards carrying out their civilian police law enforcement functions are considered police, even if administered under the Ministry of Defence.<sup>185</sup> The provision of support to the LCG is therefore not per se

ineligible for ODA, if the supported activities are considered civilian police law enforcement.

Criterion 4 excludes from ODA 'training for border guards and building the capacity of border patrols administration, except in support of ODA-eligible types of activities'. These include activities to adopt global best practices for good governance, to protect migrants' human rights and rescue of migrants when it is the main purpose of the operation.<sup>186</sup> This is in line with Article 9 of the NDICI Regulation, that states that funding 'shall not be used to finance capacity building of military actors for purposes other than the delivery of development activities and security for development activities'. Therefore, the elements of the action focusing on developing standard operating procedures and training on human rights and international humanitarian law can be deemed eligible.

However, Principle 6 excludes from ODA any activities that intercept and return migrants with the main objective to restrict migration to provider countries. In cases where it is difficult to decipher the main objective, Criterion 3 states to consider the projects' objectives and results indicators as they can indicate the extent to which the projects pursue domestic migration interests.<sup>187</sup> In the MCMP, the results indicators of the support to surveillance and organizational capacity of MRCCs are measured by the 'number of migrants intercepted/rescued'.<sup>188</sup> These, along with the rationales given for this NDICI action in Libya and Tunisia, suggest the prioritization of the EU's concern to stop irregular migration towards the EU over development objectives. The Tunisian component of this action 'is formulated against the background that irregular migration from Tunisia to Europe increased significantly in 2020' while the Libya component refers to the significant increase in irregular migration to Europe, 'especially from Libya'.<sup>189</sup>

Moreover, the form of the coastguard support needs to be examined under Criterion 4, which excludes border surveillance activities 'directly related to army or lethal action of security forces' from ODA eligibility. Regarding building training and rescue coordination centres, it is unclear from the available information which 'additional equipment' will be supplied and what specific activities would be supported. Based on current evidence on the severe misconduct and fundamental rights violations perpetrated by the LCG,<sup>190</sup> even if NDICI funds do not directly finance equipment to deliver lethal force, the provision of equipment and training for surveillance heightens the probability of migrant boats being identified by these coastguards and for such force to be applied. Furthermore, the evidence of human rights training not being followed calls into question the development effectiveness of this action. The head of Operation Irini also acknowledged 'excessive use of force' by Libyan authorities and that the training it received is not being followed,<sup>191</sup> while in March 2023, the LCG allegedly fired gun shots over a rescue ship.<sup>192</sup> Violent practices by the Tunisian National Maritime Guard have also been extensively documented.<sup>193</sup>

Moreover, the action facilitates the return and confinement of refugees and migrants in inhumane conditions in Libya, which the Commission is aware of.<sup>194</sup> For example, the rationale for Action 1 ('increasing protection and resilience of migrants in Libya'), reads that the 'number of detainees in

*Regarding building training and rescue coordination centres, it is unclear from the available information which 'additional equipment' will be supplied and what specific activities would be supported.*

unofficial detention centres or unaccounted for after rescue/interception is worryingly increasing’ and that the conditions in the detention centres ‘result in physical harm, psychological distress and trauma’.<sup>195</sup>

Despite this, the EU continues to support the LCG, which intercepts and returns people to these conditions, and ‘remains committed to its partnership with North Africa to address the increased illegal migratory pressure in close cooperation with the Member States’.<sup>196</sup> According to a report of the UN Independent Fact-Finding Mission on Libya published in March 2023, the support given by the EU to the LCG in terms of pull-backs, pushbacks, and interceptions has led to human rights violations in Libya.<sup>197</sup> The action therefore cannot be considered to be in line with European and international human rights principles such as non-refoulement and prohibition of torture.<sup>198</sup> This renders it non-compliant with Criterion 1, which specifies that projects which are not in line with applicable international law and applicable international frameworks for migrants and refugees are not eligible for ODA.

The gendered impact and specific risks to the rights and protection of women and girls linked to this action similarly appear not to have been taken into account. Countless reports document severe rights violations, including rape, sexual and gender-based violence as well as human and sex trafficking of women and girls in Libya.<sup>199</sup> In December 2022, the UN Special Rapporteur on Violence against Women described a ‘continuous cycle of violence against Libyan and non-Libyan women and girls which is compounded by complete impunity for crimes committed’ in the country. She further highlighted the risks for migrant women and children, stating she was ‘distracted by the credible and multiple reports [she] received of profoundly discriminatory and dehumanizing treatment endured by non-Libyan women and children, including girls, as well as horrific levels of torture, sexual violence, abduction for ransom, detention, trafficking in persons, forced labour and unlawful killings’.<sup>200</sup>

*The gendered impact and specific risks to the rights and protection of women and girls linked to this action similarly appear not to have been taken into account.*

Given these well-documented and high risks of severe human rights violations against refugees and migrants perpetrated by the Libyan and Tunisian coastguards, this action appears to be clearly at odds with the NDICI’s rights-based approach, guided by the principles of ‘do no harm’ and ‘leaving no one behind’ (Article 8(2) of the NDICI Regulation), and Article 29 of the NDICI Regulation which states that activities that may result in the violation of human rights in partner countries may not be funded. Based on the above, and the lack of information on key areas relevant to ODA eligibility, the action’s eligibility could be limited under Criteria 1, 3 and 4.

### **Action 3: Supporting sustainable protection, return and reintegration in North Africa**

This action builds on the national and regional actions of the EU-IOM Joint Initiative in North Africa funded by the EUTF, aiming to provide protection and assisted voluntary return from northern African countries to countries of origin, in coordination with the MPRR programme for sub-Saharan Africa (see Section 4.1.3).

*Objectives and activities:* The objectives are the return of ‘vulnerable and stranded migrants in North Africa’ to their countries of origin, the reintegration of returning migrants in North Africa, as well as increasing partner countries’ responsibility and capacity to manage migrant return, readmission and sustainable reintegration. These are to be delivered partly in coordination and complementarity with support provided by EU Member States and Frontex. Outputs include protection assistance throughout the return process, awareness raising on return and reintegration, reintegration assistance, and capacity building for national authorities on return and readmission.<sup>201</sup> For the latter, activities will ‘build on the EU-IOM Joint Initiative, factoring in lessons learned’.<sup>202</sup>

*ODA eligibility:* According to Criterion 6, reintegration programmes qualify as ODA if the main objective is the economic development and welfare of developing countries and if they do not primarily aim to address the donor’s domestic migration concerns. The latter could be the case, for example, if access to programmes is specifically offered as an incentive to leave the donor country. For activities assisting voluntary returns, only returns from another developing country are eligible (Criterion 5). This action may finance reintegration measures for people returned (forced or voluntary) from EU countries to countries in northern Africa. Reintegration support is in line with eligibility criteria, though the costs for return from an EU country would not be. Returns from EU countries are therefore not funded through NDICI. NDICI actions then partly ‘take over’<sup>203</sup> the reintegration assistance and work in complementarity with funds from Member States and Frontex<sup>204</sup> on returns.<sup>205</sup> Thus, the return and reintegration components of this action appear in line with Criteria 5 and 6.

However, the complementarity with other funds and the action’s continuation of activities focusing on ‘policy priorities put forward in the external dimension of the AVRR [Assisted Voluntary Return and Reintegration] Strategy to increase voluntary returns’<sup>206</sup> call into question whether its primary objective is development-related or addressing donors’ migration concerns, and therefore could limit the action’s ODA eligibility under Principles 1 and 3.

Finally, the lessons from the preceding EU-IOM Joint Initiative found that ‘weak capacity and will of national authorities in countries of origin to manage the reintegration process have led to little ownership over the coordination with other actors carrying out similar operations, and made reintegration more dependent on international donors and service providers, showing also that this is not a priority for the national authorities’.<sup>207</sup>

While the new action purportedly aims to take these lessons into account, it is not apparent from the programming document how. Rather, it states that support on return and reintegration ‘should build on the assumption that third countries are willing to gain expertise in this area’.<sup>208</sup> However, so far only Tunisia has its own national reintegration mechanism (which was supported through EUTF funding),<sup>209</sup> suggesting that this is not a priority for other countries.<sup>210</sup> This may limit this action’s eligibility under Principle 4, that ‘activities should be aligned with partner countries’ own priorities and their overall development strategy’.

*While the new action purportedly aims to take these lessons into account, it is not apparent from the programming document how.*



## Action 5: Support to cross-border cooperation and integrated border management in North Africa

This action aims to contribute to enhanced border security, safety, legal mobility and a protection-sensitive approach to mixed migration flows through mutually beneficial cross-border cooperation, in particular against organized crime groups, including those involved in migrant smuggling. It will focus on border areas and cooperation between Tunisia, Libya, Algeria and Egypt.

*Objectives and activities:* The action has two components: a strategic component aiming to foster understanding of the concrete benefits of integrated border management (IBM) and at reaching high-level agreement on launching operational cross-border cooperation at selected border crossing points; and an operational component aimed at establishing operational cooperation through mutually beneficial cross-border mechanisms. The strategic component includes the organization of conferences and training, while the operational component includes strengthening surveillance capability at selected border crossing points through the provision of equipment and training and establishing mobile border units with the necessary surveillance and communications equipment. It also foresees training security agencies according to EU and international standards to ensure that border controls (checks and surveillance) are conducted in full respect of the rule of law and human rights principles and with a protection-sensitive approach (with possible contribution by Frontex).<sup>211</sup>

*ODA eligibility:* Training border guards and building the capacity of border patrol administrations is generally not eligible, except in support of ODA-eligible activities (Criterion 4). Eligible activities include capacity building activities that deter, prevent and fight migrant smuggling or trafficking in human beings when aimed at protecting migrants against abuses, or civilian activities that build developing countries' capacity to improve the administration of measures related to the movement of persons and goods when the main objective is the promotion of economic development and welfare of developing countries. Therefore, the action's purpose and priorities may limit eligibility under Principle 2, regarding the redirection of ODA towards providers' immediate interests on migration at the expense of long-term sustainable development.

According to Criterion 3, to help identify the main objective of actions with mutual benefits to provider and recipient countries, the expected development-enhancing results and the projects' objectives and results indicators should be considered. While parts of the action aim to facilitate trade and integrate protection-sensitive approaches to border management, border security is largely framed in terms of combatting migrant smuggling, with reference to 'the growing market for irregular migration facilitation' as a factor for 'undermining development efforts and thereby fuelling the attractiveness of criminal activities, including migrant smuggling to Europe'.<sup>212</sup> The action's rationale includes a page-long contextualization of the increasing numbers of irregular migrants towards Europe<sup>213</sup> and the 'sustained migration pressure' in the North Africa

*While parts of the action aim to facilitate trade and integrate protection-sensitive approaches to border management, border security is largely framed in terms of combatting migrant smuggling.*

region.<sup>214</sup> The action's results are measured by the 'number of cross-border cooperation mechanisms agreed'.<sup>215</sup>

The action's ODA eligibility could therefore be limited by the functioning or intended result of these mechanisms, if these primarily fulfil the EU's objective of reducing irregular migration towards Europe.

Furthermore, there are no details about the type of surveillance and communications equipment to be funded, which could limit eligibility under Criterion 4, if directly related to military or lethal action of security forces.

### **Action 6: Enhancing international police cooperation against migrant smuggling in North Africa**

This action aims to strengthen law enforcement agencies' capacity across North Africa to effectively investigate and prosecute organized crime groups engaging in migrant smuggling and is to be implemented by INTERPOL.

*Objectives and activities:* The objectives are that police information and intelligence for investigation of organized crime groups engaging in migrant smuggling is managed, made actionable and exchanged. This is to be achieved through the provision of equipment (information system software and hardware) and training. Furthermore, cooperative targeted police operations are to be conducted at one or many border crossing points or hotspots in participating countries, involving INTERPOL and possibly officers from other participating countries, Europol, Frontex and Member States.

*ODA eligibility:* Despite its support for security forces, this action appears in line with Principle 1 ('the main objective of the activity is the promotion of the economic development and welfare of developing countries') and the rules governing ODA reporting in relation to the police, as it addresses general law enforcement and governance without the explicit aim to restrict migration.<sup>216</sup>

## **4.2.4 CONCLUSIONS**

The MCMP states that it contributes 'to ensuring that migration takes place in a safe and regular manner, preventing irregular migration and dangerous journeys and avoiding loss of life, while providing for safe legal pathways and protection to forcibly displaced people and migrants who need it in the region'.<sup>217</sup> **However, with regards to Libya, none of the seven NDICI-funded migration activities documented have so far funded activities for safe and legal pathways for refugees to seek protection or facilitated legal labour migration.**<sup>218</sup>

Two of the eight regional projects (targeting Tunisia but not Libya) focus on facilitating legal and regular (labour) migration and setting up Talent Partnerships, providing an example of projects which are fully in line with facilitating safe, orderly and regular migration and harnessing the developmental advantages of migration. Meanwhile, the findings show that three actions focus on protection, return and reintegration (Actions 1, 3 and 8), three actions on border management (Actions 2, 5 and 6) and two actions on supporting legal and labour migration (Actions 4 and 7). The

*With regards to Libya, none of the seven NDICI-funded migration activities documented have so far funded activities for safe and legal pathways for refugees to seek protection or facilitated legal labour migration.*

overriding focus thus seems to be on controlling migration and facilitating the return and reintegration of migrants.

Regarding the MCMP's stated objective of 'providing for safe legal pathways and protection to forcibly displaced people and migrants who need it', the actions currently funded lack support for strengthened access to asylum and functioning asylum systems, as well as regular pathways to protection, particularly to the EU. At the same time, projects with the aim of enhancing integrated border management and fighting trafficking/smuggling of migrants are marked as contributing to DAC code 15190 on facilitating safe, regular and orderly migration. Arguably, while they may contribute to stopping irregular and possibly unsafe migration, it is unclear how the specific activities would facilitate migration as opposed to merely monitoring and restricting it.

*The overriding focus thus seems to be on controlling migration and facilitating the return and reintegration of migrants.*

Three out of the four actions analysed in depth (or three out of eight in total) contain elements that may limit ODA eligibility under the TWG guidelines. Incompatibility with the guidelines is most prominent in the actions that appear, according to their rationale and results indicators, to prioritize EU concerns on migration and border management over the economic development and welfare of partner countries. This is particularly evident with the support to the Libyan and Tunisian coastguards (Action 2), where numerous reports indicate that the support will contribute to defence capacities and violence towards people on the move, and it remains unclear how the action contributes to the SDGs.<sup>219</sup>

In Tunisia, the EU's border management agenda has been met by 'open or subtle resistance from Tunisian state actors – at the level of policy development and policy practice.'<sup>220</sup> This may be one of the reasons why Tunisia has also been reluctant to cooperate with Frontex<sup>221</sup> and EUAA is currently still trying to 'establish contacts with the Tunisian administration' to adapt a law on asylum and establish a protection framework.<sup>222</sup>

Meanwhile, North African countries may be hesitant to adopt such legislation, because they are worried 'that if they adopt laws protecting the rights of refugees, the EU will use this to turn their countries into asylum processing centres'.<sup>223</sup> The Commission acknowledged that Tunisia does not necessarily share the EU's interest in increasing protection and asylum capacities, though working on reintegration is less sensitive.<sup>224</sup>

Finally, the actions funded in Libya undermine the EU's commitment to policy coherence for development<sup>225</sup> and the principles of development effectiveness, while actions funded in both Libya and Tunisia are at odds with the 'do no harm' and 'leaving no one behind' principles of the NDICI Regulation, as well as the prohibition of funding activities that may result in the violation of human rights in partner countries, including the high risks of gender-based violence and exploitation of women and girls. The EU has expressed concern over protection issues in the overcrowded unofficial detention sites and excludes Libya from the returns and reintegration activities provided in Action 3, due to the country's unstable security situation.

However, it nonetheless funds the coastguard that takes individuals back to these conditions (Action 2). The UN Independent Fact-Finding Mission on Libya found that previous EU assistance to Libya's migration department and coastguard 'has aided and abetted the commission of the crimes', including crimes against humanity.<sup>226</sup>

Simultaneously, the investigation found that the LCG has worked 'in close coordination' with trafficking networks in Libya, the same criminal groups that the EU aims to combat with Actions 5 and 6.

# 5. MONITORING, TRANSPARENCY AND EXTERNAL OVERSIGHT OF THE NDICI

The prioritization and increase of EU funding for asylum, forced displacement and migration outside of EU territory since 2015 has not been accompanied with increased transparency or oversight mechanisms.<sup>227</sup> The NDICI addresses these shortcomings to some extent, by creating a single instrument and integrating the European Development Fund into the EU budget. Since it previously existed outside the EU budget it was not automatically subject to European Parliament scrutiny.<sup>228, 229</sup> The migration marker helps trace funding allocations for migration.

However, as evidenced in the case studies, migration-related objectives and results indicators are still very broadly worded in programming documents, making it difficult to monitor whether and how stated aims are pursued in practice (and by whom), activities carried out for this purpose, as well as the amount and source of funding flowing into specific activities.

Furthermore, when actions include procurement contracts for specific goods or services, this is not always specified in the programming documents, making it difficult to scrutinize these activities *ex ante*. There is no single EU database or repository systematically documenting NDICI projects, which further obstructs the tracing and assessment of migration aims and activities. This prevents EU citizens, academics, CSOs and policymakers from effectively monitoring the implementation of EU official development assistance under NDICI. This study can therefore only offer a partial picture of the reality on the ground.

*Migration-related objectives and results indicators are still very broadly worded in programming documents.*

## 5.1 EUROPEAN COUNCIL OVERSIGHT AND MEMBER STATE INVOLVEMENT

The NDICI's 10% migration component was the outcome of negotiations between the Council and Parliament, with the Council and Member States viewing it as a minimum, but the Parliament as a maximum, threshold.<sup>230</sup> Due to Member States' desire for increased oversight, a coordination group was set up specifically to oversee migration and forced displacement programming under the NDICI, and to address ongoing and emerging challenges.

This established an unprecedented level of coordination solely for this aspect of EU development funding, reflecting the importance ascribed to it by Member States.<sup>231</sup> Member States are informed of funding decisions for

all other NDICI–Global Europe activities through the NDICI Committee (Article 45) in the Council, which demands an annual report regarding NDICI implementation. No similar coordination or exchange with the Parliament is taking place or planned.

Member States are also highly involved in the TEIs, a central part of Global Europe Programming which includes actions funded and managed through NDICI as well as the national resources of Member States. So far, 38% of the TEI's budget is Member State contributions.<sup>232</sup> It remains unclear whether Member States' contributions to a TEI fall under the 93% ODA commitment, which further hinders effective assessments of NDICI-funded migration actions with multiple funding sources, and whether the 93% target is being met or not.

The TEIs were formulated without the involvement of civil society<sup>233</sup> and prioritize EU positions, visibility and flexibility over partner ownership and effectiveness,<sup>234</sup> undermining the principle of inclusive and mutually beneficial partnerships underpinning NDICI cooperation.<sup>235</sup> This is at odds with Article 8(6) of the NDICI Regulation, where the Commission commits to:

*... ensur[ing] that relevant stakeholders in partner countries, including civil society organisations and local authorities, are duly consulted and have timely access to relevant information allowing them to be adequately involved and play a meaningful role in the design, implementation and associated monitoring processes of programmes.*

## 5.2 EUROPEAN PARLIAMENT OVERSIGHT

In contrast to the Council, the Parliament has little to no role in the programming phase. However, the Maastricht Treaty gives it budgetary control over the entire EU budget and thus a supervisory role in EU development programmes. Oversight of NDICI lies with the Parliament's Foreign Affairs (AFET) and Development (DEVE) Committees, which have established thematic working groups to oversee NDICI programming.<sup>236</sup>

From 2022 onwards, the Commission must submit annual reports to the Parliament and Council on the achievement of the NDICI's objectives, by measuring funded actions' results and efficiency.<sup>237</sup> The Commission must also inform the Parliament before it mobilizes the 'emerging challenges and priorities cushion' funds and 'fully take into consideration' the Parliament's observations on the nature, objectives and financial amounts envisaged for this cushion.<sup>238</sup>

However, as evidenced above, the NDICI's flexible funding mechanisms (i.e. the non-programmable rapid response actions, the cushion of unallocated funding, and Member State contributions to TEIs) and poor documentation hinder Parliament's insight into the programming and implementation. This calls into question the value of the Parliament's observations or whether this is merely a box-ticking exercise. This concern is magnified by the lack of Parliament scrutiny over TEIs. While Parliament is informed when funds

*This calls into question the value of the Parliament's observations or whether this is merely a box-ticking exercise.*

from the cushion are mobilized, there are no formal avenues to block a certain funding allocation.<sup>239</sup>

The Commission is also required to regularly exchange information and views with the Parliament, the Council and other stakeholders, including CSOs.<sup>240</sup> The Commission has also committed to conducting a biannual high-level geopolitical dialogue with the Parliament on the implementation and strategic orientation of the Global Europe Regulation, taking full consideration of Parliament's positions on its implementation that emerge from these exchanges,<sup>241</sup> including regarding programming, the cushion, migration and financial allocations.<sup>242</sup>

However, according to the Parliament, overall trends rather than project details are discussed in these dialogues,<sup>243</sup> while the Commission frequently arrives unprepared, fails to provide adequate programming documentation even when explicitly requested by MEPs, and frequently neglects or fails to respond to the Parliament's recommendations.<sup>244</sup> These dialogues take place behind closed doors, excluding civil society or public participation.

*These dialogues take place behind closed doors, excluding civil society or public participation.*

## 6. CONCLUSIONS

A qualitative analysis of NDICI-funded migration actions, based on the OECD's principles and ODA eligibility criteria, shed light on the **EU's formalization of the pursuit of domestic migration concerns under the guise of development assistance.**

Conclusive assessments of the ODA eligibility of NDICI-funded migration actions are not possible, due to the NDICI's broad objectives, vaguely worded phrasing or missing detail in regional programming documents, lack of publicly available procurement contracts, as well as the early implementation stage.

Nonetheless, **more than one-third (six of the sixteen) migration actions identified in Niger, Libya and Tunisia, considered key countries along migration routes to the EU, include elements that could limit their ODA eligibility. The NDICI's 10% migration component therefore risks redirecting resources from development and poverty reduction to the EU's migration objectives, particularly reducing irregular migration to the EU.** The formulation and evaluation of projects under the NDICI 10% migration component also remain highly untransparent for the public, civil society, as well as for the Parliament as co-legislators, obstructing effective monitoring to mitigate this risk.

Effective scrutiny is further hindered by the instrument's flexible funding arrangements, as well as the **Commission's approach of funding activities and equipment it considers non-eligible for ODA (e.g., relating to returns or border management) through funding sources without an ODA commitment.**

This 'patching up' of non-ODA eligible elements in NDICI-funded migration actions, instead of adapting or terminating them, further suggests a prioritization of the EU's migration concerns over the pursuit of development objectives. Indeed, a 2021 report by the EUTF Manager of the North Africa Window in DG INTPA's 2021 Annual Activity Report stated that until the OECD TWG published their guidelines, the Commission worked under the assumption that all border management activities were fully ODA compliant. If these activities were to become partially non-eligible, DG NEAR and DG INTPA deemed that 'non-eligible elements could be covered by contributions, which do not have to comply with ODA eligibility criteria (e.g. AMIF or partially ENI do not have legally binding ODA eligibility requirements)'.<sup>245</sup> This **dilution of development aid complicates assessments of whether the NDICI's 93% ODA commitment is met.**

The findings further reveal the EU's prioritization of specific types of migration programming, with migration, border management and return receiving significantly more funding than, for example, supporting labour migration or regular pathways. **In Niger, 75% of the regional and country-specific projects examined focus on migration and border management/security, disregarding the local economic benefits of regional mobility.** In North Africa, under the Multi-Country Migration Programme for the Southern

*The formulation and evaluation of projects under the NDICI 10% migration component also remain highly untransparent for the public, civil society, as well as for the Parliament as co-legislators, obstructing effective monitoring to mitigate this risk.*



Neighbourhood, border security is allocated the most funding at 37%, compared to another 37% for protection, return and reintegration together. **Only 25% of the projects analysed support legal and labour migration in the region**, excluding Libya. In Libya, cooperation focuses on training and operational capacity building of the Libyan authorities and protection programming related to conditions in detention facilities.

*Only 25% of the projects analysed support legal and labour migration in the region, excluding Libya.*

**The EU thus currently prioritizes migration actions identified by the OECD as posing a particular risk to the integrity of ODA.** Actions involving the capacity building of border guards, strengthening integrated border management and the fight against human smuggling often include elements that could limit ODA eligibility. **Return and reintegration actions include elements that appear non-compliant with the criterion that ODA actions must be aligned with a recipient country's own priorities** and not be conditioned on its cooperation on returns.

Finally, **protection actions reveal significant incoherence between EU migration and development policy.** In Libya, EU funds (not necessarily ODA) are spent on border surveillance to rescue/ intercept people, who are returned to inhumane conditions in detention centres. EU development aid is in turn spent on improving these conditions and evacuating people from them. The case studies indicate the detrimental impact that this prioritization can have on country ownership and the principle of mutually beneficial partnerships, as for many developing countries 'migration as such has not been recognised as a principal development priority'.<sup>246</sup>

While offering a snapshot in the early stage of its implementation, this study suggests that the **NDICI's 10% migration component is a missed opportunity to implement lessons learned from the EUTF and to harness the development advantages of migration, instead becoming a tool to mask EU migration control as development assistance.** The EUTF lessons learned report stated that actions should place more emphasis on labour migration as compared to other areas.<sup>247</sup>

However, while declaring the promotion of economic development in partner countries as its main aim, the NDICI's migration component tells a different story, with the MCMP only mentioning remittances once and the sub-Saharan Africa region including only two actions that tangentially mention remittances transfers (Actions 1 and 4).

Moreover, CSOs, including Oxfam, warned of donors' potential misuse of the new DAC code 15190 ('facilitation of orderly, safe, regular and responsible migration and mobility') to report projects that aim to contain mobility rather than facilitate it, which would undermine developmental goals.<sup>248</sup> While the EU labels initiatives to prevent irregular migration with this DAC code and thus as pursuing the Global Compact for Migration's aim of 'safe, orderly and regular migration', **the reduction of irregular migration does not equate with an increase in safer or regular migration.** The latter will only be achieved through targeted action to strengthen and improve safe and regular migration pathways, including to the EU.

*While the EU labels initiatives to prevent irregular migration with this DAC code and thus as pursuing the Global Compact for Migration's aim of 'safe, orderly and regular migration', the reduction of irregular migration does not equate with an increase in safer or regular migration.*

Recommendations for actions for the European Commission, the European Parliament and the OECD DAC and monitoring bodies can be found in the executive summary of this paper.

# ANNEXES

## ANNEX 1: ODA-ELIGIBLE MIGRATION-RELATED ACTIVITIES

<i>Migration-related objectives</i>	<i>ODA-eligible activities</i>
Ensuring access to <b>international protection</b>	Enhancing developing countries' capacity to incorporate a rights-based approach to a migration dimension within the design and implementation of their development strategies and other public policies.
Addressing the <b>root causes</b> of irregular migration and forced displacement	<p>Development activities where migration and development research has found evidence of causation between a migration-related activity and positive development outcomes.</p> <p>Activities aimed at and measured by their impact on the economic development and welfare of developing countries.</p>
Enhancing <b>border management</b> and pursuing efforts to prevent irregular migration and forced displacement	<p>Enhancing developing countries' capacity to incorporate a rights-based approach to a migration dimension within the design and implementation of their development strategies and other public policies.</p> <p>Civilian activities that build the capacity of developing countries to improve the administration of measures related to the movement of persons and goods, when the main objective is the promotion of economic development.</p> <p>Activities to adopt global best practices for good governance (e.g. identity management, document verification, the fight against corruption).</p> <p>Activities to protect migrants' human rights.</p> <p>Activities that promote the establishment and implementation of procedures and processes for safe, orderly and regular migration in the best interests of migrants and their wellbeing (e.g. activities with a focus on making mobility safer, human security, awareness campaigns, social and medical services, provision of safety and/or humanitarian or medical assistance to migrants).</p> <p>Capacity building activities that deter, prevent and fight migrant smuggling or trafficking in human beings when aimed at protecting migrants against abuses.</p> <p>Rescue of migrants when it is the main purpose of the operation.</p>

<p>Fighting against <b>trafficking in human beings and migrant smuggling</b></p>	<p>Activities which address rule-of-law issues.</p> <p>Financing for routine civil policing functions (i.e. pursuant to preventing and addressing criminal activities and the promotion of public safety).</p>
<p>Working on dignified and sustainable <b>returns</b>, readmission and reintegration</p>	<p>Assistance to migrants for their safe, dignified, informed and voluntary return to their country of origin in the case of returns from another developing country.</p> <p>Reintegration programmes qualify as ODA if they primarily focus on the economic development and welfare of developing countries.</p>
<p>Engaging with diasporas and supporting <b>legal migration</b> pathways</p>	<p>Engagement with diaspora in provider country with clear developmental or humanitarian aim for the primary benefit of the origin country.</p>

Sources: Based on OECD (2022)<sup>249</sup> and OECD (2023).<sup>250</sup>

## ANNEX 2: BREAKDOWN OF THE MCMP PRIORITY AREA 'STRENGTHENING MIGRATION AND ASYLUM MANAGEMENT'

<i>Objectives</i>	<i>Results</i>	<i>Indicators</i>
<p>Developing adequate legislation and policies</p> <p>Institution building</p>	<p>Improved migration policies, governance and management capacities</p>	<p>Number and quality of strategies or policies a) developed/revised; or b) under implementation with EU support</p>
<p>Fight against smuggling of migrants and trafficking in human beings;</p> <p>law enforcement cooperation; creating economic alternatives to smuggling of migrants;</p> <p>identification of victims of trafficking</p>	<p>Improved capacities of law enforcement agencies and authorities</p> <p>Support projects that promote the development of alternative economic activities</p>	<p>Number of outcomes of operational exchanges</p> <p>Number of law enforcement officers benefitting from specialized training</p> <p>Number of target beneficiaries having access to training and/or job opportunities</p>
<p>Strengthening border management (facilitating legal movements while preventing irregular migration); support to state institutions on border management in fragile border areas; institutional capacities to carry out SAR operations at sea and on land</p>	<p>Institution building, including training facilities</p> <p>The surveillance and organizational capacity of MRCCs is reinforced</p> <p>The surveillance capacity of the land border management institutions is strengthened</p> <p>Improved SAR operations</p>	<p>Number of training institutions established, number of staff trained, curricula developed and items of equipment delivered</p> <p>Items of equipment delivered and number of migrants intercepted/rescued through SAR operations</p> <p>Number of border management mechanisms agreed and implemented</p>
<p>Supporting policy dialogue, cooperation and capacities at bilateral, regional and continental levels</p>	<p>Policy dialogues are supported</p>	<p>Number and quality of outcomes of relevant policy dialogues</p>

# NOTES

- <sup>1</sup> 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>
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- 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.
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- 10 Principle 2 of the DAC guiding principles and criteria for migration-related activities in ODA.
- 11 See explanation in Section 1.1.
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- 13 See Article 8(12) of the NDICI Regulation.
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- 23 See, for example, Council of the European Union. (20 September 2021). Operationalization of the Pact – Action Plans for Strengthening Comprehensive Migration Partnerships with Priority Countries of Origin and Transit. Draft Action Plan: Niger. Accessed 6 June 2023. <https://www.statewatch.org/media/2766/eu-council-com-draft-action-plan-niger-migration-11950-21.pdf>
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- 52 See Article 17 of the NDICI Regulation.
- 53 European Commission. (n.d.). Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI – Global Europe). Accessed 6 June 2023. [https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/neighbourhood-development-and-international-cooperation-instrument-global-europe-ndici-global-europe\\_en](https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/neighbourhood-development-and-international-cooperation-instrument-global-europe-ndici-global-europe_en)
- 54 See Article 3(4) of the NDICI Regulation.
- 55 The Busan Partnership Agreement for Effective Development Cooperation was reaffirmed at the Nairobi High-Level Forum in 2016, including ownership of development priorities by developing countries, a focus on results, inclusive development partnerships, transparency and mutual accountability. See also Article 8(6) of the NDICI Regulation.
- 56 See also Recital 12 of the NDICI Regulation: ‘Eradicating poverty, tackling discrimination and inequalities, leaving no one behind, protecting the environment and fighting climate change, and strengthening resilience are at the heart of development cooperation policy and should underpin the implementation of the Instrument.’
- 57 See Article 3(2d) of the NDICI Regulation.
- 58 See Recital 50 of the NDICI Regulation.



- 59 See Recital 51 of the NDICI Regulation.
- 60 See Article 20 of the NDICI Regulation.
- 61 OECD DAC. (2020). Brief on the DAC Temporary Working Group, op. cit.
- 62 OECD. (n.d.). Migration-related Activities in Official Development Assistance (ODA). Accessed 6 June 2023. <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/migration-oda.htm>
- 63 OECD DAC. (2022). Summary Record of the 1109th DAC Meeting Held on 5 and 6 July 2022. Accessed 6 June 2023. [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC/M\(2022\)9/FINAL&docLanguage=en](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC/M(2022)9/FINAL&docLanguage=en)
- 64 OECD DAC. (2022). Clarifying the ODA Eligibility of Migration-related Activities. Accessed 6 June 2023. [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC\(2022\)53/FINAL&docLanguage=en](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC(2022)53/FINAL&docLanguage=en)
- 65 Ibid.
- 66 Official Journal of the European Union. (2012). Consolidated Version of the Treaty on European Union. Article 21(2c). Accessed 6 June 2023. [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)
- 67 See Article 9(2) of the NDICI Regulation.
- 68 See Article 9(3a) of the NDICI Regulation.
- 69 See Article 9(3b) of the NDICI Regulation.
- 70 See Article 9(4) of the NDICI Regulation.
- 71 See European Commission and High Representative of the European Union for Foreign Affairs and Security Policy. (2015). Capacity Building in Support of Security and Development: Enabling Partners to Prevent and Manage Crises. Accessed 6 June 2023. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015JC0017&from=EN>; European Union External Action Service. (n.d.). Strategy for Security and Development in the Sahel. Accessed 6 June 2023. [https://eeas.europa.eu/archives/docs/africa/docs/sahel\\_strategy\\_en.pdf](https://eeas.europa.eu/archives/docs/africa/docs/sahel_strategy_en.pdf)
- 72 European Commission. (7 December 2017). Questions and Answers: Measures in support of security and development in partner countries. Press release. Accessed 6 June 2023. [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_17\\_5127](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_17_5127)
- 73 See Box 3, p35 in OECD. (2023). Converged Statistical Reporting Directives for the Creditor Reporting System (CRS) and the Annual DAC Questionnaire. Accessed 6 June 2023. [https://one.oecd.org/document/DCD/DAC/STAT\(2023\)9/FINAL/en/pdf](https://one.oecd.org/document/DCD/DAC/STAT(2023)9/FINAL/en/pdf)
- 74 See OECD. (2023). Converged Statistical Reporting Directives, op. cit.; OECD. (n.d.). Official Development Assistance – Definition and Coverage. Accessed 6 June 2023. <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/officialdevelopmentassistanceandcoverage.htm>. Furthermore, EU support to security sector capacity building needs to be underpinned by EU external action principles, including ownership by the partner country and alignment to the partner's long-term development strategies and respect for human rights and adherence to international humanitarian law. See European Commission and High Representative of the European Union for Foreign Affairs and Security Policy. (2015). Capacity Building in Support of Security and Development, op. cit.
- 75 Answer given when asked 'Are all of the programmes and actions funded under the two TEIs considered as official development assistance (ODA)? If not, which projects do not fall under ODA?' at the InfoPoint Hybrid Conference: Migration – Team Europe Initiatives in Africa, Friday 17 March 2023.
- 76 Interview with EU Commission representative.
- 77 Remark made by DG INTPA Director for Africa at InfoPoint Hybrid Conference: Migration – Team Europe Initiatives in Africa, Friday 17 March 2023.
- 78 OECD ODA purpose codes are descriptions used to identify the sector of destination of a contribution. See OECD. (n.d.). DAC and CRS Code Lists. Accessed 6 June 2023. <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/dacandcrscodelists.htm>
- 79 Interview with EU Commission representative.
- 80 Therefore the assessments made in this report may differ from the final assessments conducted by the OECD for each DAC member every four to five years according to the Statistical Reporting Directives.
- 81 See, for example, L. Davis. (2021). EU External Expenditure on Asylum, Forced Displacement, and

- Migration 2014–2019. ECRE. Accessed 6 June 2023. <https://ecre.org/wp-content/uploads/2021/03/Working-Paper-14.pdf>; and T. Raty and R. Shilhav. (2020). The EU Trust Fund for Africa, op. cit.
- 82 See Recital 50 of the NDICI Regulation.
- 83 European Parliament. (2022). EU Migration and Asylum Funds for Third Countries. Study requested by the LIBE Committee. Accessed 6 June 2023. [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/737870/IPOL\\_STU\(2022\)737870\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/737870/IPOL_STU(2022)737870_EN.pdf)
- 84 Ibid.
- 85 Unless they address a concrete forced displacement situation. See NDICI Regulation Recital 50. Since addressing the root causes of migration and forced displacement can include a broad range of activities, DG INTPA Director for Africa declared at InfoPoint Hybrid Conference: Migration – Team Europe Initiatives in Africa, Friday 17 March 2023, that ‘everything INTPA does in Africa is addressing root causes.’
- 86 OECD. (n.d.). DAC and CRS Code Lists, op. cit.
- 87 Other codes used less frequently for migration-related activities include 13010, ‘Population policy and administrative management’; 15130, ‘Legal and judicial development’; 15160, ‘Human rights’; and 24050, ‘Remittance facilitation’. See DAC Working Party on Development Finance Statistics. (2018). Proposed New Purpose Code for “Facilitation of Orderly, Safe, Regular and Responsible Migration and Mobility”. OECD. Accessed 6 June 2023. [https://one.oecd.org/document/DCD/DAC/STAT\(2018\)23/REV3/en/pdf](https://one.oecd.org/document/DCD/DAC/STAT(2018)23/REV3/en/pdf)
- 88 OECD DAC. (2020). Brief on the DAC Temporary Working Group, op. cit., p2.
- 89 Ibid.
- 90 The principles and criteria for migration-related activities are defined in paragraphs 133 and 134 of OECD. (2023). Converged Statistical Reporting Directives, op. cit.
- 91 The DAC-CSO Reference Group (of which Oxfam is a founding member) facilitates and coordinates engagement with the OECD DAC by CSOs from both the Global North and Global South. See DAC-CSO Reference Group. (n.d.). Who We Are. Accessed 6 June 2023. <https://www.dac-csoreferencegroup.com>
- 92 Questions based on DAC-CSO Reference Group. (2021). Joint CSO Policy Recommendations for the DAC TWG on ODA Eligibility of Migration-related Activities. Accessed 6 June 2023. <https://www.dac-csoreferencegroup.com/post/joint-cso-policy-recommendations-for-the-dac-twg-on-oda-eligibility-of-migration-related-activities>
- 93 NB Criterion 4 includes further points, see section ‘Who benefits and what is money spent on?’ in table below.
- 94 For a list of eligible activities see Annex 2 and DAC Working Party on Development Finance Statistics. (2018). Proposed New Purpose Code, op. cit.
- 95 See eligibility rules and exclusions in OECD. (2023). Converged Statistical Reporting Directives, op. cit., paragraphs 113 and 114.
- 96 Ibid.
- 97 European Commission. (n.d.). Global Europe – Programming, op. cit.
- 98 See European Commission. (n.d.). Funding by Management Mode: Three Management Types. Accessed 6 June 2023. [https://commission.europa.eu/funding-tenders/find-funding/funding-management-mode\\_en](https://commission.europa.eu/funding-tenders/find-funding/funding-management-mode_en)
- 99 The migration-related TEIs for the case studies are one each on the western and central Mediterranean routes. See European Union. (n.d.) Western Mediterranean Migration Route. Accessed 6 June 2023. <https://europa.eu/capacity4dev/tei-jp-tracker/tei/western-mediterranean-migration-route>; European Union. (n.d.) Central Mediterranean Migration Route Accessed 6 June 2023. <https://europa.eu/capacity4dev/tei-jp-tracker/tei/central-mediterranean-migration-route>
- 100 Migration actions that may be part of the regional MIPs (i.e. sub-Saharan Africa) but target regions/countries that fall outside of the scope of this research (i.e. the Horn of Africa, Great Lakes Region) are excluded from the analysis.
- 101 See, for example, European Commission. (12 December 2022). EU working together with African partners on migration: Launch of Team Europe initiatives. Press release. Accessed 6 June 2023. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_7540](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7540)
- 102 For example, under EU pressure, Niger was the first sub-Saharan country to amend its national legislation to criminalize smuggling in 2015 and adopted repressive measures including forms of containment of migrants. Especially in the Agadez region, this has had disastrous consequences for

local development, security and freedom of movement, with the EU compensation not making up for the economic benefits that migration and mobility had on the local economy. The criminalization of migration and border fortification also forced people on the move into more dangerous 'underground' routes. European Parliament. (2022). EU Migration and Asylum Funds for Third Countries, op. cit.

- 103 European Commission. (15 July 2022). Joint press release: Strengthening cooperation in the fight against migrant smuggling: the European Union and Niger launch operational partnership to tackle migrant smuggling. Press release. Accessed 6 June 2023. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_4536](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4536)
- 104 The joint investigation team aims to foster cooperation between Nigerian and European authorities on anti-smuggling operations. See Emergency Trust Fund for Africa. (2023). Creation of a Joint Investigation Team (ECI) for the Fight Against Criminal Networks. Accessed 6 June 2023. [https://trust-fund-for-africa.europa.eu/our-programmes/creation-dune-equipe-conjointe-dinvestigation-eci-pour-la-lutte-contre-les-reseaux-criminels\\_en](https://trust-fund-for-africa.europa.eu/our-programmes/creation-dune-equipe-conjointe-dinvestigation-eci-pour-la-lutte-contre-les-reseaux-criminels_en)
- 105 The European Border and Coast Guard Agency.
- 106 European Commission. (2020). Sub-Saharan Africa Multi-Annual Indicative Programme 2021–2027, op. cit., pp43–48.
- 107 Ibid. pp54–55.
- 108 Ibid. Specific Objectives 1–3, p45.
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- 110 European Commission. (2020). Sub-Saharan Africa Multi-Annual Indicative Programme 2021–2027, op. cit.
- 111 European Commission. (2022). Commission Implementing Decision of 30.9.2022 on the Financing of the Multiannual Action Plan in Favour of Sub-Saharan Africa for 2022–2024 Part 1, Annex 10. Accessed 9 June 2023. [https://international-partnerships.ec.europa.eu/document/download/c22124f9-36ea-4497-9bc4-37bb6d4d4c3b\\_en?filename=aap-2022-2024-c2022-7113-sub-saharan-africa-part1\\_en.zip](https://international-partnerships.ec.europa.eu/document/download/c22124f9-36ea-4497-9bc4-37bb6d4d4c3b_en?filename=aap-2022-2024-c2022-7113-sub-saharan-africa-part1_en.zip)
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- 146 European Union. (2020). Annexe 1 de la Décision d’exécution de la Commission relative au

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- 147 Ibid. p24.
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- 152 The Niger Stratégie de Développement Durable et de Croissance Inclusive (SDDCI) is organized around six pillars. Managing migration is not one of these six pillars. See European Parliament. (2022). EU Migration and Asylum Funds for Third Countries, op. cit., p72.
- 153 Talent Partnerships are a policy framework to augment legal and labour migration pathways from partner countries to the EU based on labour needs. See [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-integration/talent-partnerships\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-integration/talent-partnerships_en). Accessed 13 June 2023.
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- 155 This project still has a strong border management component, albeit with the aim to facilitate mobility, make it safer and address human rights standards. However, for the EU the ultimate motivation seems to be that '[s]caling up support to promote intra-regional mobility can contribute to decreasing irregular migration towards Europe'. See European Commission. (2022). Commission Implementing Decision of 16.12.2022. on the Financing of the Multiannual Action Plan in Favour of Sub-Saharan Africa for 2022–2026 Part 2, Annex 30, op. cit., p4.
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- 238 See Recital 71 of the NDICI Regulation.
- 239 Interview with Parliament representative.
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