



# SETTING THE HIGHEST STANDARDS FOR GLOBAL EUROPE IMPLEMENTATION

## Policy paper on EU ODA, migration and Global Europe

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Global Europe – the new EU development cooperation instrument<sup>1</sup> – will be implemented in a context of 80 million people globally facing long-term forced displacement. Of that number, 85% are hosted in low and middle income countries, the majority in their own country or in a neighbouring country. In the near future, this number is expected to increase due to climate crises, conflicts and food insecurity.

CONCORD was against setting a migration spending target in Global Europe, not because migration is not an important theme in development, but because of the way it has been framed by the EU – aimed at curbing migration rather than reducing inequalities and poverty and promoting human rights. CONCORD has also urged EU Member States not to support migration cooperation conditionality in the instrument. However, given that the EU has chosen to proceed with a regulation that includes references to conditionality, as well as a robust spending target for migration-related activities, CONCORD aims to propose a way forward, which supports constructive development efforts related to migration, while highlighting some risks of conditionality and securitisation contained in the Global Europe Regulation.

A positive way forward would respond to the real needs that exist in communities in relation to migration and respect the highest standards set by international, humanitarian and

human rights law. Researchers in the field of migration and development broadly agree that migration generally brings about both positive and negative effects for people on the move as well as for their places of origin, transit and destination. Development cooperation can contribute to strengthening the positive effects of migration on development and livelihoods in low and middle income countries, as well as attempting to prevent the negative effects on societies and protect the safety and human rights of people on the move. The EU support could help harness the benefits of cross-border movement of peoples and the development contributions of diaspora. Instead, externalising the EU's migration policies and prioritising the EU's internal agenda around migration is detrimental for migrants' rights and local development and breaches the EU Treaties' principle of policy coherence for development.

Part 1 of this paper aims to critically assess some key risks that Global Europe approach to migration entails. With evidence, Part 2 suggests, in practice, which types of projects and programmes as well as unexplored areas the EU should focus on for the migration actions under Global Europe. Part 3 gathers some innovative and forward-looking recommendations to the EU about the implementation of the share of the Global Europe budget earmarked for migration-related activities.

<sup>1</sup> Background to the Global Europe instrument (former NDICI) is added as Annex 1 at the end of this paper.

# PART 1. KEY RISKS OF GLOBAL EUROPE'S APPROACH TO MIGRATION

From a policy perspective, there are many reasons why Global Europe's approach to migration is problematic. As the EU ODA instrument that promotes a holistic approach to migration governance, Global Europe should be in line with the EU commitment to poverty reduction (Article 208 TEU), to the 2030 Agenda for Sustainable Development and the 'leave no one behind' principle. This is enshrined in the objectives of the regulation itself, which states that the "regulation shall contribute to the promotion of [...] in particular the Sustainable Development Goals" (article 3) – including, for example, the SDG target 10.7 on safe and orderly migration.<sup>2</sup> However, the potential diversion of ODA towards externalising EU migration policies through an agenda aiming to contain migration, using primarily security approaches, hinders the realisation of the 2030 Agenda and the potential of migration to contribute to positive development outcomes. Some EU migration actions undertaken in the past years have been subject to allegations and criticism from international organisations and European human rights bodies, on the grounds that they do not respect, or actually undermine, these rights and obligations within and outside the Union. Some examples are the pending cases before the European Court of Human Rights (ECHR)<sup>3</sup> and national courts,<sup>4</sup> the statement on potential human rights violations by the EU institutions and its Member States by the Commissioner of the Council of Europe (CoE)<sup>5</sup> and procedures before UN human rights bodies.<sup>6</sup> Instead, all actions by EU institutions and agencies 'with[in] their respective powers' need to conform with the EU Charter of Fundamental Rights (Article 51 CFR). There are no situations under EU law that authorise the EU to act in breach of fundamental rights.

The first section below deals with migration policy conditionality on EU ODA, which has to be seen as overarching danger of the Global Europe instrument. Afterwards, the following four sections tackle specific risks linked to conditionality.

## INSTITUTIONALISATION OF CONDITIONALITY

The explicit intention to use Global Europe funding as leverage through conditionality is enshrined in its regulation.<sup>7</sup> One of the main aims of conditionality is to incentivise cooperation on return migration; specifically, the Global Europe regulation relies on a strategy which:

"shall combine all appropriate tools and the necessary leverage through a flexible incitative approach with, as appropriate within this context, possible changes in allocation of funding related to migration" and "it shall take into account effective cooperation and implementation of EU agreements and dialogues on migration" (Article 8.10, emphasis added).

For 'neighbourhood' countries, Global Europe sets an even clearer binding conditionality based on their progress on inter alia cooperation on migration (Article 20.1). The message is clear: non-cooperation by partner countries on the EU's migration priority issues will be costly as the 'more for more' and 'less for less' approach is used – effectively creating punishments and rewards.

The EU, in using the term 'incitative', is simply dissimulating: it is avoiding stating that it will apply conditionality since it is ethically questionable to subordinate development objectives to migration politics.

Even when conditionality is used for positive outcomes such as making duty-bearers accountable to human rights, governance or development objectives, conditionality in development cooperation is extremely complex and has often led to negative impacts on people and sustainable development in the past.<sup>8</sup> But migration policy conditionality is

<sup>2</sup> The SDG 10.7 target aims to facilitate orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies.

<sup>3</sup> European Court of Human Rights (2018), *S.S. and Others v. Italy*, [https://www.icj.org/wp-content/uploads/2019/11/ECtHR-SS\\_v\\_Italy\\_final-JointTPI-ICJECREAIREDCR-English-2019.pdf](https://www.icj.org/wp-content/uploads/2019/11/ECtHR-SS_v_Italy_final-JointTPI-ICJECREAIREDCR-English-2019.pdf)

<sup>4</sup> Association for Legal Studies on Migration (2019), *ASGI's case against Italian government for supporting the Libyan Coastguard through misuse of "Africa Fund" money goes on appeal*, <https://sciabacaoruka.asgi.it/en/asgis-case-against-italian-government-for-supporting-the-libyan-coastguard-through-misuse-of-africa-fund-money-goes-on-appeal/>

<sup>5</sup> Council of Europe (2019), *Third party intervention by the Council of Europe Commissioner for Human Rights*, <https://rm.coe.int/third-party-intervention-before-the-european-court-of-human-rights-app/168098dd4d>

<sup>6</sup> StateWatch (2020), *Pull-backs by the Libyan Coast Guard: complaint filed with UN Human Rights Committee*, <https://www.statewatch.org/news/2020/july/pull-backs-by-the-libyan-coast-guard-complaint-filed-with-un-human-rights-committee/>; Glan (2019), *Privatised Migrant Abuse By Italy and Libya*, <https://www.glanlaw.org/nivincase>

<sup>7</sup> PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS Subject: Proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument (COM(2018)0460 – C8-0275/2018 – 2018/0243(COD)), 15th March 2021, (Henceforth, Provisional Agreement (2021))

<sup>8</sup> Molenaers, N., Nijls, L. (2011), "Why the European Commission Fails to Adhere to the Principles of Good Donorship: The Case of the Governance Incentive Tranche", in *The European Journal of Development Research*, [https://www.researchgate.net/publication/227469108\\_Why\\_the\\_European\\_Commission\\_Fails\\_to\\_Adhere\\_to\\_the\\_Principles\\_of\\_Good\\_Donorship\\_The\\_Case\\_of\\_the\\_Governance\\_Incentive\\_Tranche](https://www.researchgate.net/publication/227469108_Why_the_European_Commission_Fails_to_Adhere_to_the_Principles_of_Good_Donorship_The_Case_of_the_Governance_Incentive_Tranche)

in violation of PCD, development effectiveness principles and EU human rights obligations.

In what should be regarded as an institutionalisation of conditionality on EU ODA related to migration issues, these provisions in the Global Europe regulations are similar to existing explicit conditionality built into other agreements such as the new agreement between the EU and the Organisation of African, Caribbean and Pacific States (OACPS), the proposed EU-Africa partnership, and EU's Pact on Migration and Asylum with its accompanying proposed Asylum and Migration Management Regulation (RAMM). For example, in the New Pact on Migration Asylum, visa policy in the form of either restrictive or favourable visa measures is outlined as a mechanism to 'incentivise' cooperation on return and readmission. The Asylum and Management Regulation suggests the identification of further measures. At the EU level, the trend is clear: migration compliance through conditionality has become institutionalised, is being consolidated and there is every expectation that Global Europe will not only continue this trend but contribute to its normalisation.



### DEVELOPMENT EFFECTIVENESS PRINCIPLES AS THE BASIS FOR GLOBAL EUROPE IMPLEMENTATION

Global Europe sets various aspects of migration as a high priority in the EU's dealings with partner countries and regions, including restrictive border management and return elements. Even the emphasis in Global Europe on 'tackling root causes of irregular migration' is driven by a preventive approach to mobility towards and into the EU and a eurocentric understanding of 'positive' and 'negative' migration.<sup>9</sup> Nevertheless, 93% of the funding under Global Europe is ODA and should therefore comply with the development effectiveness principles such as country ownership, results focus, and inclusive partnerships.

The question of shared objectives is important since the EU's new approach to development cooperation focuses on mutually beneficial partnerships. Some initial evaluations of the EU Multi-Annual Indicative Programmes (MIPs), which should be developed in consultation with the partner country itself and local actors such as CSOs, are noteworthy. They estimate that migration as such has not been recognised as a principal development priority – but possibly as a secondary objective or a priority to be mainstreamed. Some countries may support mobility enhancing activities and job creation that could be linked to root causes and at the same time reject migration activities related to returns or developing refugee camps, for example.

- **Eroding country ownership and inclusive partnerships:** In a context of economic asymmetries, using development assistance to further EU migration priorities carries the risk of undermining global commitments to country ownership and inserting policy priorities that do not resonate with key challenges on the ground. The discrepancy between EU migration priorities and the needs on the ground can be so extreme that it has led to citizens in partner countries actively mobilising themselves against EU migration policies. *For example, in reaction to EU and partner governments policies, in several countries such as Mali, Togo, Cameroon and Senegal, so-called Expelled Migrants Associations have emerged as public actors, voicing political demands to their governments and the EU.*<sup>10</sup>
- **Diversion of ODA and less focus on development results:** The EU should provide support to human rights and vital health, education and social services in partner countries on the basis of needs, not compliance related to migration management. The externalisation of EU migration policies through a less than transparent agenda of securitisation and containment of migration, risks diverting ODA away from the realisation of the 2030 Agenda, from development results and from reducing poverty and inequalities. **Moreover, with migration control prerogatives dominating EU external migration policy, the value of the migration-development nexus is marginalised and the potential of migration as a development force remains largely unexplored.** *The public EUTF for Africa projects database indicates that it has implemented numerous programmes that analysts identify as having a focus on cooperation geared towards increased returns and readmissions of irregular migrants, involving efforts to enhance border security and control measures. However, out of the total EUTF for Africa implemented funding (€3.9bn over Nov 2015-May 2019) just €56m is allocated to fund regular migration schemes between African countries or between Africa and the EU. These schemes actually have the potential of contributing to positive development outcomes. This represents less than 1.5% of the total worth of the EUTF for Africa.*<sup>11</sup>



### POLICY COHERENCE FOR SUSTAINABLE DEVELOPMENT AT THE HEART OF EU COOPERATION WITH PARTNER COUNTRIES

The EU Policy Coherence for Development (PCD) principle enshrined in the Treaty on the European Union requires the EU institutions and its Member States to take into account the objectives of development cooperation in all their external and internal policies that are likely to affect developing

<sup>9</sup> Working on the root causes of migration goes beyond migration management and covers a wide array of policy fields which requires its implementation to be in line with the principles in development effectiveness, Policy Coherence for Sustainable Development (PCSD) and the achievement of 2030 Agenda SDGs.

<sup>10</sup> Lecadet, C. (2017), *Europe Confronted by Its Expelled Migrants: The Politics of Expelled Migrants' Associations in Africa*, in De Genova, N (Ed.), 'The Borders of Europe: Autonomy of Migration', *Tactics of Bordering* (pp. 141-164). p. 159

<sup>11</sup> Oxfam (2020), 'EU Trust Fund for Africa: Trapped between aid policy and migration politics'. According to Oxfam's research and classifications funding for development cooperation stands at 56% of the instrument, while spending on migration governance reaches 26% and spending on peace and security components reaches 10% of the total fund. 2% of the EUTF for Africa is allocated to research and learning projects, and 6% is allocated to projects "which could not be classified because of insufficient detail".

countries. According to PCSD, non-development EU policies should not compromise sustainable development objectives. By externalising its own internal migration policies, including border control, EU actions may contribute to human rights violations, undermine freedom of movement and disrupt patterns of mobility linked to livelihoods, instead of positively contributing to development goals of poverty reduction.

- **Disrupting patterns of regional mobility and undermining free movement linked to livelihoods:**

The focus on implementing border control measures increasingly prevents the free movement of persons. This is particularly problematic in regions where mobility is closely associated with access to livelihoods and development opportunities. *This is a reality in West Africa, where promoting regional free movement of persons through regional and continental frameworks is key to the long-term development of West African countries. Since 1979, the ECOWAS Member States established the Free Movement of Persons Protocol – which is of particular importance for women, who represent 47% of total migrants in West Africa.<sup>12</sup> In Niger, new laws caused heavy regulation of transportation in border towns, disrupted the free ECOWAS movement of persons for trade, agriculture and for cultural reasons, and also contributed to infringement of human rights contained in national and regional laws. In such contexts, allocating ODA to border management-related projects can lead to very clear negative impacts on development, notably for women migrants.*

- **Criminalising human mobility and exposing people on the move to human rights abuses:**

Some migration-related interventions have fuelled human trafficking (modern slavery) and the arbitrary detention of asylum-seekers and refugees in dangerous and inhuman conditions.<sup>13</sup> Stringent migration management policies risk criminalising mobility as well as assistance offered to people on the move, with devastating consequences especially on women and girls. *An example is provided by the European Court of Auditors, which lamented the Mismanagement of EU Funds by the EU Trust Fund for Africa's 'Support to Integrated Border and Migration Management in Libya' (IBM) Programme over human rights abuses for refugees and migrants in Libya.<sup>14</sup> While restricting mobility, some actions may also result in driving further smuggling and accompanying violations become*

further hidden from sight. Increased securitisation also risks diversifying migration routes, pushing migrants to take more dangerous alternatives, benefiting human traffickers and increasing local corruption among certain state officials. Instead, people and human rights centered approaches that put a focus on the protection and respect of the rights of people on the move are not a strong feature of the Global Europe regulation. The prioritisation of other aspects relating to people on the move downplays and marginalises the importance of their protection.

- **Pursuing contradictory goals:** By combining issues of migration and development with issues of border management, immigration control and preventing irregular migration, the Global Europe regulation risks pursuing contradictory objectives. *"Paying specific attention to countries of origin and transit," (Art 8.10) risks over-prioritising countries that are primarily of concern to the EU, not levels of need or priorities of partner states.*

### **TRANSPARENCY AND SCRUTINY OVER GLOBAL EUROPE PROGRAMMES AND PROJECTS**

The Global Europe regulation allocates indicatively 10% of the overall budget (almost €8 billion over seven years) to migration-related activities. Beyond the geographic and thematic programme budgets the European Commission can use a variety of funding instruments to implement EU programmes and policies on migration in partner countries – allowing itself high degrees of flexibility.<sup>15</sup> Within Global Europe this includes the rapid response actions (€3.18 billion) and the “cushion” of unallocated funding (€9.53 billion).<sup>16</sup>

Budgetary flexibility can provide much-needed latitude and rapid deployment of resources in unforeseen situations (such as the COVID-19 pandemic). But it also means more can be allocated to political priorities like migration, to supplement or reinforce allocations made within Global Europe or which are too politically sensitive for the new EU instrument to include. While some EU programmes will be focused on addressing root causes of migration – which are poverty- and inequalities-related – the perimeter to prevent programmes being disproportionately focused on aspects unrelated to sustainable development is blurred.

<sup>12</sup> International Labour Organisation (2020), *Women migrant workers' labour market situation in West Africa*, [https://www.ilo.org/wcmsp5/groups/public/--ed\\_protect/--protrav/--migrant/documents/publication/wcms\\_751538.pdf](https://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--migrant/documents/publication/wcms_751538.pdf)

<sup>13</sup> Tubiana J., Warin, C. and Saeneen, G. (2018), *Chapter 3: Effects of EU policies in Sudan. In: Multilateral Damage. Clingendael. September 2018.*

<sup>14</sup> European Court of Auditors (2020), *Complaint to the European Court of Auditors Concerning the Mismanagement of EU Funds by the EU Trust Fund for Africa's 'Support to Integrated Border and Migration Management in Libya' (IBM) Programme*, [https://c5e65ece-003b-4d73-aa76-854664da4e33.filesusr.com/ugd/14ee1a\\_ae6a20e6b5ea4b00b0aa0e77ece91241.pdf](https://c5e65ece-003b-4d73-aa76-854664da4e33.filesusr.com/ugd/14ee1a_ae6a20e6b5ea4b00b0aa0e77ece91241.pdf)

<sup>15</sup> In addition to Global Europe, several EU internal funding instruments with a specific migration focus will be able to implement programmes outside the EU borders. For instance, the Integrated Border Management Fund (IBMF), budgeted at €5.5bn, as well as the Asylum and Migration Fund (AMIF), budgeted at €8.7bn are both open to external programming in third countries. The Internal Security Fund (ISF), budgeted at €2.5bn – primarily geared towards tackling organised crime and security threats – proposal includes an external component geared towards tackling migrant smuggling. ISF funding has in the past been used to provide assistance to the Libyan Coast Guard. (Ref, see footnote 14).

<sup>16</sup> Provisional Agreement (2021)

- **Secrecy of EU migration negotiations clashes with the principle of transparency and accountability:**

As part of the development effectiveness agenda, the EU and partner countries have committed to making any conditions connected to development cooperation public from the get-go. This is an important aspect of accountability, as both the general public in the partner countries and the public in the EU should know what terms of cooperation their leaders are promoting and committing to. In EU migration policy, there is a fundamental lack of transparency. In a recent EC Communication on returns and readmissions,<sup>17</sup> the underlying data was not open to the public, so there can be no public scrutiny of specific country situations, comparing ODA and migration data. Many partner country governments do not want to publicise demands from the EU, because migration is not seen as a development problem by their voters, and they do not want to give the impression that the EU can pressure them. **A good minimum standard of whether something should be considered ODA is whether the stakeholders involved can accept transparency and accountability to the public.**

- **Reporting at the DAC level:** In 2018, the OECD's Development Assistance Committee (DAC) approved a new reporting code (Creditor Reporting System (CRS) Code 15190) by which donors, including the EU, can identify and report ODA that is designed for 'facilitation of orderly, safe, regular and responsible migration and mobility'.<sup>18</sup> In addition to that code, overall criteria for which migration-related activities can fit within the ODA definition is currently under revision to settle unresolved questions. This process will clarify grey areas, which may rectify some of the current latitude and ambivalence in the interpretation of Global Europe's provisions. DAC criteria should reiterate that assistance to forced returnees as well as activities that "pursue first and foremost providers interest" are excluded from ODA.<sup>19</sup> Migration-related development cooperation activities must respect and be based on human rights and the ODA objective to reduce poverty. The concept of what is qualified as ODA according to agreements in the OECD DAC should not be undermined by EU development programmes compromised by conditionality and priority-setting in favour of the EU migration agenda. It is key that no EU actions with questionable development

credentials are included in the reporting of ODA to the OECD DAC. *For example, the EU's notorious development cooperation with Libya and support of its coastguard is reported (legitimately according to the criteria) by the EU as ODA 'contributing to government and civil society, population policies and emergency response', while human rights organisations, the Council of Europe<sup>20</sup> and the UN denounce the initiative as having dire human rights consequences.<sup>21</sup>*



**UPHOLDING MULTILATERAL AND PARTNERSHIP COMMITMENTS IN ALL GLOBAL EUROPE ACTIONS**

Upholding the EU's multilateral and partnerships commitments and its principles and values is of key importance. The use of Global Europe should not undermine or damage the EU's global standing, or erode international law. The impact of using conditionality represents clear dangers, as noted below:

- **Damaging EU's credibility in international partnerships:** If Global Europe is used to continue current migration strategies and leverage even greater conditionality, it risks reputational damage by flouting commitments to various standards inherent in EU development assistance principles (e.g. ODA primary objectives, multilateralism, Policy Coherence for Development), ultimately rendering long-term sustainable partnerships less viable. *For example, Malian civil society has been very critical of the EU and, following 2016, urged an end to the cooperation between Mali and the European Union on migration management and to the conclusion of readmission agreements.<sup>22</sup> Similar reactions have occurred in other West African states. Prioritising specific migration objectives at the expense of others risks the adoption of extreme policy positions that become normalised. This undermines the EU's values while entrenching trends already visible in global approaches to migration. This is also known as "Normalising the extreme".<sup>23</sup> For example, in November 2020, the European Parliament (EP) voted for a report in favour of making EU ODA to developing countries conditional on their compliance with EU migration control objectives. This contradicted the established EP position on this subject and its mandate for negotiating the Global Europe instrument. Previously the EP was in consistent*

<sup>17</sup> European Commission (2021), *Enhancing cooperation on return and readmission as part of a fair, effective and comprehensive EU migration policy*

<sup>18</sup> DAC Working Party on Development Finance Statistics "Proposed New Purpose Code For "Facilitation Of Orderly, Safe, Regular And Responsible Migration And Mobility". 25th May 2018.

<sup>19</sup> OECD DAC Purpose codes sector classification.

<sup>20</sup> Council of Europe (2019), *Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights, Application No. 21660/18 S.S. and others v. Italy*

<sup>21</sup> According to Oxfam, since July 2017, nearly €90m has been released through the EUTF for Africa to train, equip and support the capacity of the Libyan coastguard to intercept migrants at sea and land borders. The involvement of the Libyan coastguard in the trafficking of people and violations of international law is well-documented. Many of the people rescued or intercepted by the coastguard are returned to indefinite, arbitrary detention in horrendous conditions in Libya – yet the EU views this partnership cooperation as a success.

<sup>22</sup> Idrissa, R. (2020) *Dialogue in Divergence The Impact of EU Migration Policy on West African Integration: The Cases of Nigeria, Mali, and Niger*. FES

<sup>23</sup> Horwood, C. (2020), *Normalisation of the Extreme*. Mixed Migration Centre.

# “Migration-related development cooperation activities must respect and be based on human rights and the ODA objective to reduce poverty.”

*opposition in the EU MFF negotiations to conditioning aid on the basis of migration objectives.<sup>24</sup>*

- **Contributing to conflict:** Border restrictions, policies of containment, increased pressures on returns and securitisation of migration management could fuel instability in third countries. In environments where job alternatives are few, joining militias or radical insurgents may become attractive for frustrated migrants, asylum-seekers and unemployed smugglers. *For example, in Niger the economic destabilisation caused by the securitisation of migration and anti-smuggling initiatives has increased unemployment and scarcity. This in turn has reportedly exacerbated an already volatile and economically fragile context where, inter alia, Islamic militias and others threaten the peace nationally and regionally.* This raises concerns as to the EU's expressed will to provide “more for more” to partners who succeed in reaching mutually agreed migration policy objectives. The logical consequence of the EU promoting cooperation to curb migration is that more money will go to stakeholders who are effective at stopping people from crossing borders. *In Sudan, this has led to funding of militia stopping people with force. In Niger, human mobility has effectively been made illegal, leading to unknown numbers of deaths in the Sahara desert when people try to find alternative routes, according to a local UNHCR representative.<sup>25</sup> In both these examples, the agreed objective of curbing migration has been “successfully” met.* The meaning of more for more should not be to reward human rights abuses by authoritative leaders.
- **EU's complicity in human rights abuses:** There is a risk of increased exposure of people on the move to abuse. Pursuing migration management and control may contribute to weakening the protection of the human rights of people on the move, and risks limiting democratic accountability or aggravating repression in partner countries. This is particularly the case when the EU or its Member States cooperate with regimes that have a disregard for human rights and democratic institutions.<sup>26</sup> The transfer of migration management responsibilities to third countries does not exonerate the EU and its Member States from the abuses that might take place on the territory of third countries and puts the EU at risk of violating its commitment to upholding human rights extraterritorially<sup>27</sup> under article 3(5) TEU, and article 21(1) TEU.<sup>28</sup> *In addition to the extreme case of Libya, migration-focused agreements with Egypt and Sudan offer examples where preventing movement appears to be of greater concern than the rights of those on the move or seeking asylum. In Sudan, EU financing reportedly contributed to supporting militia tasked with patrolling remote areas without any accountability or scrutiny, curtailing migrants movement and intercepting human smugglers. Multiple violations were reported. Finally, the EU's relationship with Turkey, in which it depends on Turkey to restrict and contain movement to Europe, adds legitimacy and confidence to an authoritarian regime with a dire human rights record.*

<sup>24</sup> REPORT on improving development effectiveness and the efficiency of aid (2019/2184(INI))

<sup>25</sup> Mansklig Sakerhet, “När en flykting dör på Medelhavet dör två i Sahara”, 21 April 2020, <http://manskligsakerhet.se/2021/04/13/nar-en-flykting-dor-pa-medelhavet-dor-tva-i-sahara/>

<sup>26</sup> Koch, A., Weber A. and Werenfels, I. (2018), *Profiteers of Migration? Authoritarian States in Africa and European Migration Management*. SWP Research Paper 2018/RP. 4 July 2018.

<sup>27</sup> European Court of Human Rights (2012), *Case of Hirsi Jamaa and Others v. Italy*, <https://hudoc.echr.coe.int/spa#%7B%22itemid%22%3A%5B%5B%22001-109231%22%5D%7D>

<sup>28</sup> *In practice, the most relevant case law in terms of extraterritoriality is the “Case of Hirsi Jamaa and Others v. Italy” before the ECtHR.*

# PART 2. SETTING A BETTER MIGRATION DIRECTION FOR GLOBAL EUROPE

Despite criticism from civil society and UN agencies of the EUTF for Africa framework, some useful innovations and approaches were implemented that offer a positive illustration of good practices to guide future Global Europe partnerships. For example, this includes programming flexibility, longer-term funding, and a focus on community resilience. Additionally, in contexts of protracted crises leading to people moving as a semi-permanent survival strategy, development funding that operates within the Humanitarian-Development-Peace nexus can be an important complement to shorter term ODA/humanitarian interventions. Tying the responses to migration into longer term development strategies through the geographical programmes offers Global Europe good opportunities in its use of the 10% migration allocation.

The European Commission affirms that many development-focused outcomes were also achieved through the EUTF for Africa. It reports having implemented 254 'actions' in 26 EU partner countries and claims, for example, to have created more than 132,000 jobs, assisted approximately half a million people through developing income-generating activities while improving access to basic social services for 9.3 million people. Ethiopia is often taken as a good example: here 71% of EUTF for Africa programmes country-based funding goes to development programmes. Further, over 100,000 marginalised migrants were assisted after their return.<sup>29</sup>

In 2019, the EU reported over 100 projects and programmes under the DAC reporting code 15190. That database contains some good examples, which, among several objectives, uphold human rights and support migrant communities and the most marginalised people in situations related to migration and mobility.

Below is a non-exhaustive list of some concrete examples from the OECD DAC records as well as from the EUTF for Africa projects database.<sup>30</sup> The list helps set a positive direction for the implementation of the Global Europe 10% allocation to migration actions, strengthening the capacities of the most marginalised people and communities:

### **Essential services (education, health):**

- Training and education towards the economic empowerment of Afghan women in South and Central Asia;
- Enhancing protection services and access to health for asylum-seekers in Turkey;

### **Gender equality:**

- Support of NGOs working to protect women and children from trafficking in the Caribbean and Central America region;
- Empowerment of women and girl migrant workers, communities and key institutions to protect and promote migrant workers' rights and access to justice in Bangladesh;

### **Refugees' protection:**

- Strengthening international protection, reception and integration capacity for refugees in Argentina;
- Strengthening the protection of human rights and fundamental freedoms of internally displaced and conflict-affected communities in East Ukraine;

### **Food security, resilience and peace-building:<sup>31</sup>**

- Promoting Resilience and Peaceful Coexistence Among Displacement Affected Communities in Northeast Nigeria;
- Support to sustainable solutions and reintegration for displacement affected communities in Jubaland State of Somalia; building resilient communities in Somalia followed by RESTORE; building Resilience in Northern Somalia;
- Building self-resilience in North Uganda;
- Food security & resilience in Transitioning Environments in South Sudan;
- Alliance for Communities' Resilience in Mali.

Projects of this calibre are more suited as development responses to safe migration and the needs of forcibly displaced people. The scale of forced displacement globally, the increase in mixed displacement and mobility linked to the impacts of climate change as well as at risk refugees and displaced people in camps and urban centres (not least from the impact of Covid-19) call for dedicated action. Global Europe implementation offers a significant opportunity to have a positive impact in a context where people on the move are often among the most marginalised and unprotected in a population. Beyond empowering marginalised communities and providing resilience and right-based interventions, Global Europe programmes and projects can and should harness the transformational power of migration, instead of seeing migration as a security risk. This is true at several levels – between the EU and partner regions, but also at intra-regional, national and local levels. In Africa – and especially in the Sahel region – migration between African countries is very common and essential for local economies and societies.

<sup>29</sup> European Commission. EUTF FOR AFRICA. Factsheet. 2020

<sup>30</sup> European Commission, Akvo RSR (akvoapp.org), <https://eutf.akvoapp.org/>

<sup>31</sup> These projects are led by the following NGOs: Norwegian Refugee Council, Action Contre la Faim, World Vision, Humanity and Inclusion.

## **“Over 2021-2027, Global Europe spending should seize the dynamic opportunities migration offers (both South to South as well as South to North and circular migration), along with the positive development potential of diaspora and remittance flows.”**

Over 2021-2027, Global Europe spending should seize the dynamic opportunities migration offers (both South to South as well as South to North and circular migration), along with the positive development potential of diaspora and remittance flows.

The following selection offers an indication of migration-focused interventions that especially protect and enhance rights and build upon migration as a development force – some well-known and needing greater support and others less explored deserving more attention. All illustrate opportunities for constructive engagement with migration-earmarked allocations for Global Europe.

- Dynamically support and improve access to legal and regular migration through enhanced capacity of relevant government institutions;
- Enhance partner countries' capacity to incorporate the migration dimension into the design and implementation of their development strategies and other public policies;
- Maximise the potential of remittances for local economic and social development;
- Capacity-strengthening to ensure birth registration for the prevention of statelessness;
- Support effective implementation of the ECOWAS Free Movement of Persons' Protocols and the ECOWAS Common Approach on Migration;
- Support other interregional and intraregional free movement initiatives;
- Protect the human rights of migrants including the special needs of children and women;
- Support rights-based migration management and asylum systems;
- Support CSOs as crucial actors providing assistance and protection to displaced persons, migrants and returnees and monitoring their rights;
- Empower the CSOs role to gather lessons learned and monitoring the impact of migration projects;
- Whenever relevant, consider CSOs as partners for implementation rather than 'using them to implement';
- Continue and actively expand positive engagement of INGOs to implement programmes to ensure close adherence to human rights principles;
- Empower female migrant workers and their communities to uphold their rights;
- Strengthen the capacity of diaspora organisations and mechanisms for collaborative engagement between governments and diaspora.



# PART 3. RECOMMENDATIONS

Part 2 points to suggests which types of projects and programmes as well as unexplored areas the EU should focus on for the migration actions under Global Europe. Therefore it contains various recommendations that the EU should follow to implement the share of the Global Europe budget earmarked for migration-related activities. On top, the recommendations below deal with other aspects of Global Europe migration allocation that this paper as dealt with in Part 1.

## 1 ENSURE DEVELOPMENT EFFECTIVENESS PRINCIPLES AS THE BASIS FOR GLOBAL EUROPE IMPLEMENTATION

- i. EU ODA must not be conditioned or diverted to promote the EU's other domestic or foreign policy objectives, but instead must support sustainable development objectives.
- ii. Given the high migration spending target – 10% of the Global Europe budget – the European Commission should assess migration programmes funded by Global Europe based on their contribution to sustainable development, rather than based on the number of assisted returns or of actions aimed at enhancing border security and control measures.
- iii. The European Commission should base the Global Europe allocation to migration-related actions on an analysis of a country's needs, rather than on politically driven motives. The EU must clearly define its programming process in dialogue with partner countries, civil society and other relevant stakeholders and in line with national development strategies and other strategic documents (such as the EU roadmaps with civil society). Furthermore, there should be no diversion of funding from low-income countries and regions to countries of origin or transit, on the sole basis that they are on a migratory route to Europe.
- iv. Any flexibility in the EU's financial instruments should nonetheless adhere to development and humanitarian objectives and principles, particularly those in the Global Partnership for Effective Development Co-operation (2012, *Busan agreement*). Flexibility and use of unallocated funding can not mean that obligations and commitments to correct ODA eligibility and sustainable development principles are abandoned. All Global Europe migration-related spending should be DAC-able.

## 2 PLACE POLICY COHERENCE FOR DEVELOPMENT AT THE HEART OF EU COOPERATION WITH PARTNER COUNTRIES

- i. Recognising the positive role of migration, Global Europe should support the implementation of Global Compact on Migration (GCM) and Global Compact on Refugees (GCR) by facilitating regional free movement schemes, asylum systems compliant with the Convention Relating to the Status of the Refugees (also known as the 1951 Geneva Convention), and safe, orderly, regular and responsible migration legal pathways to the EU.
- ii. The EU institutions and EU Member States together with partner countries should promote positive narratives on migration to decrease negative political pressure stemming from anti-immigration sentiments – including through educational programmes. They should highlight the benefits of migration for sustainable development, leveraging the positive development impact of migration for migrants themselves as well as for communities and countries of origin and destination, as established by the SDG Target 10.7.
- iii. Through Global Europe, the European Commission should build holistic relations with partner countries to be able to meet complex challenges beyond migration and focus on development objectives rather than crisis-driven policy responses reflecting internal politics in the EU. EU ODA can be more fruitfully spent on *structural* changes fostering *sustainable* development (including trade, social economies) rather than on stop-gap projects offering short-term solutions.
- iv. Global Europe should orient its potential partnership agreements and activities (including trade and climate agreements) towards projects such as those cited in Part 2 of this policy brief. CSOs should be consulted to provide strong guidance on development- and rights-focused migration programmes which address the root causes of forced migration and displacement, and the protection and reception of refugees and IDPs in the region.

### 3 STRENGTHEN TRANSPARENCY AND SCRUTINY OVER GLOBAL EUROPE PROGRAMMES AND PROJECTS

- i. The European Commission should make agreements and documentation regarding development-migration partnerships, including its monitoring and evaluation documents like annual reports on high-risk projects, such as cooperation with partner countries' border agencies and coastguards, publicly available so that both EU citizens as well as partner country citizens understand what exactly is being agreed.
- ii. The monitoring and evaluation of EU migration-related funding should be increased and meet the same high standards as every other area of development funding. Moreover, the European Commission's monitoring and evaluation documents, including annual reports on high-risk projects, such as cooperation with partner countries' border agencies and coastguards, should be scrutinised by the European Parliament and EU Member States. Monitoring and analysis should be conducted with particular reference to human rights, policy coherence for sustainable development, development effectiveness and a focus on reducing poverty and inequalities. Any ODA spending on migration-related projects should be captured and visualised in the EU Aid Explorer.
- iii. Global Europe programmes should be subject to thorough oversight and scrutiny of external funding mechanisms in third countries to ensure programmes conform to the OECD-DAC eligibility criteria for ODA. The European Commission and other EU donors should ensure the use of the OECD DAC migration reporting code (CRS Code 15190) to ensure appropriate monitoring by peers and civil society.
- iv. The Global Europe regulation brings EU ODA spending firmly under the scrutiny of the European Parliament. The European Parliament should therefore monitor whether migration conditionality is used or applied as well as whether human rights are respected in Global Europe migration spending. The European Parliament should organise regular sessions with the European Commission to report on EC migration spending and actively involve CSOs that work on migration issues in such sessions.
- v. The EU institutions need to ensure appropriate transparency and compliance. The EU institutions need to avoid creating parallel mechanisms that may include programmes that are not implemented by mutual agreement with partner governments and communities and subject to high levels of accountability. An example is the proposed Regional

Migration Support Programme (RMSP) for sub-Saharan Africa<sup>32</sup> with its *flexible incitative approach*. The EU Delegations in charge of the implementation of the RMSP should ensure meaningful consultations with local CSOs and INGOs that operate in the region to plan and implement RMSP activities.

### 4 UPHOLD MULTILATERAL AND PARTNERSHIP COMMITMENTS IN ALL GLOBAL EUROPE ACTIONS

- i. The EU must safeguard its credibility and reputation as an international cooperation partner by ceasing to prioritise its internal migration policy in external ODA partnerships, particularly when shaped and impacted by conditionalities and/or incentives.
- ii. The EU is duty-bound to uphold its commitments to human rights, aid effectiveness and coherence.<sup>33</sup> Prior to the implementation of all EU migration-related programmes and projects, a robust due diligence and do-no-harm analysis must take place in order to prevent risks of human rights violations. Global Europe programmes should avoid any projects that involve partners implementing actions that deny migrants and asylum-seekers their human rights, or use violence or degrading treatment of migrants and asylum-seekers in any way. Any programmes that involve abusive actions must be suspended and rights abuses condemned and investigated and the perpetrators prosecuted.
- iii. The EU's development policies and the EU's political commitment to build equal partnerships should be designed to meet its international commitments including local and democratic ownership under the 2030 Agenda and the Busan agreement. It must be guided by the 'do no harm' and the 'leave no one behind' principles (also enshrined in the 2017 European Consensus on Development), and its commitment to poverty reduction as enshrined in Article 208 TEU and it must increase equality between and within countries.
- iv. Global Europe programmes should take the United Nations Convention on the Rights of the Child into account, with a particular focus on migrant children and their families, as well as unaccompanied children. Programmes should also ensure "support to children and youth as key agents of change and as contributors to the realisation of the 2030 Agenda, giving particular attention to their needs and empowerment."<sup>34</sup>

<sup>32</sup> CSO/LA Consultation Regional Programming In Sub-Saharan Africa 2021-27 23rd March 2021

<sup>33</sup> For human rights: Consolidated Versions Of The Treaty On European Union And The Treaty On The Functioning Of The European Union (2008/C 115/01) (Articles 3 (5) and Art 21 (3)). For aid effectiveness; EU's Policy Coherence for Development (PCD) – PCD was first introduced in EU law by the Treaty of Maastricht (1992), and further reinforced by the Treaty of Lisbon (2009). It was reiterated in the new European Consensus on Development (2017).

<sup>34</sup> Provisional Agreement (2021)op cit.

# ANNEX A: SUMMARISING THE ROLE OF MIGRATION IN GLOBAL EUROPE (FORMER NDICI)

The European Union is adopting the NDICI, now known as Global Europe, as a new funding instrument for development assistance/aid in support of partner countries/organisations actions in the 7-year budget, the Multiannual Financial Framework (MFF) for 2021-2027.<sup>35</sup> Global Europe creates a mega-instrument for development aid and external action that merges most of the existing thematic and geographic EU external financing instruments. According to the proposed regulation, Global Europe “should aim at increasing the coherence and ensuring the effectiveness of the Union’s external action thus improving the implementation of the different external action policies.”<sup>36</sup> The budget for Global Europe is €79.5 billion in current prices (2021) with a 93% DAC-ability commitment. It includes a €9.53 billion “cushion” of unallocated funds to address unforeseen circumstances and new priorities; these funds might be to top-up any of the geographic and thematic programmes and rapid response mechanism – including to actions related to migratory trends and forced displacement (article 17) .<sup>37</sup> While the European Commission and its EU Delegations (EUDs) will play a role in programming and implementing Global Europe, oversight is likely to lie within the European Parliament Foreign Affairs (AFET) and Development (DEVE) Committees.<sup>38</sup> Also, the Commission will be assisted by the ‘NDICI Committee’ (Article 45) in the Council of the EU, which will require an annual report regarding Global Europe implementation.

Migration is one of the main objectives of the Global Europe regulation and a priority in all its different pillars. It is given high rank since it is also one of the five geopolitical priorities set by the European Commission for the EU’s international partnerships and in the creation of development assistance programmes. The regulation allocates an indicative 10 % (€7.95 Billion) of the total Global Europe funding to actions “supporting management and governance of migration and forced displacement”(Recital 50), “in addition, this target should also include actions to address the root causes of irregular migration and forced displacement when they directly target specific challenges related to migration and forced displacement” (Recital 50).

Migration-related actions will be implemented through the geographic and thematic programmes as well as through the rapid response mechanism. However, there is an inherent contradiction between the regulation’s emphasis on comprehensive approaches to migration within strengthened partnerships and the desire to “pursu[e] efforts to prevent irregular migration and forced displacement,” (Recital 49). This echoes wider contradictions between attempting to prevent migration instead of recognising and promoting its potential for development.

Equally there is ambivalence where cooperation with EU partner countries is to rely on an approach that aims to “combine all appropriate tools and the necessary leverage through a flexible incitative approach with, as appropriate within this context, possible changes in allocation of funding related to migration in accordance with the programming principles of this Regulation”(Article 8.10).

Without explicit use of the term, these provisions indicate conditionality will be an inherent part of the relationship between the EU and partner countries with regard to migration. At the same time, and illustrating further contradictions, cooperation is intended to be managed in coherence with migration-relevant EU regulations, in full respect of the principle of policy coherence for development and where benefits of *orderly, safe, regular and responsible* migration can be reaped (Recital 49).

Finally, the migration allocation in the Global Europe instrument is a result of a long 3 years political negotiations between the EU institutions – notably the European Parliament and the Council of the EU. The latter, pushed by some EU Member States in particular, had initially proposed a much tougher migration conditionality across the whole instrument. Instead, the final agreement on Global Europe aims to limit, in principle, such a policy conditionality on EU ODA to the 10% allocation to migration-related activities.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid*, Recital 13.

<sup>37</sup> European Commission (2021), *European Commission welcomes the endorsement of the new €79.5 billion Global Europe instrument to support EU’s external action.*

<sup>38</sup> *Jegen.L. et al.(2020) op cit.*

# OUR MEMBERS

<b>NATIONAL PLATFORMS</b>	 Global Responsibility Austrian Platform for Development and Humanitarian Aid	 BELGISCH PLATFORM PLATEFORME BELGE CONCORD CNCOCIT,11,11 11,11,11 AGOSSEY ngefedentatie	 BPID Bulgarian Platform for International Development	 Platforma za međunarodnu građansku solidarnost Hrvatske Croatian Platform for International — Citizen Solidarity CROSOL	 CYINDEP Cyprus Island wide NGO Development Platform	 FORS
 GLOBAL FOCUS Danish CSOs for Development Cooperation	 AKÜ	 fingo	 COORDINATION SUD	 VENRO ASSOCIATION OF GERMAN DEVELOPMENT AND HUMANITARIAN AID NGOs	 Hellenic Platform for Development	 HAND
 Dochas The Irish Association of Non-Governmental Development Organisations	 Network of NGOs in Europe per lo sviluppo e l'emergenza CONCORD ITALIA	 LAPAS WWW.LAPAS.LV	 Lithuanian National Non-Governmental Development Cooperation Organisations Platform LITDEA	 Cercle de coopération des ONGD DU LUXEMBOURG	 SKOP Solidarjeta u Koperazjzjoni	 PARTOS
 ZAGRANICA	 ONGD PLATAFORMA PORTUGUESA	 FOND Federalni Organizacije i Inicijative u okviru Donacije iz Poljske	 Ambrella Platform for Development Organisations	 SLOGA SLOVENIAN GLOBAL ACTION	 COORDINADORA coordinadora de ONGD en ESPAÑA	 CONCORD SWEDEN
 bond	<b>NETWORKS</b>	 actalliance eu formerly ANCODEV	 act:onaid	 ADRA	 care	 caritas europa
 cbm together we can do more	 ChildFund Alliance	 CIDSE together for global justice	 eucord European Union Civil Society Network for Aid and Development	 GNDR Global Network of Civil Society Organisations for Disaster Reduction	 Habitat for Humanity	 humanity & inclusion
 IPPF International Planned Parenthood Federation European Network	 LIGHT FOR THE WORLD	 OXFAM International	 PLAN INTERNATIONAL	 Save the Children	 Sightsavers	 solidar
 SOS CHILDREN'S VILLAGES INTERNATIONAL	 Terre des Hommes International Federation	 wecf	 Wetlands INTERNATIONAL	 World Vision	 WWF	<b>ASSOCIATE MEMBERS</b>
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