## ReSOMA:
Research Social platform On Migration and Asylum

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## LIST OF ABBREVIATIONS AND DEFINITIONS

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<tr>
<td>DoA</td>
<td>Description of Action</td>
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<td>EC</td>
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<td>H2020</td>
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<td>POBs</td>
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<td>SG</td>
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<td>MFF</td>
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<td>TTFM</td>
<td>Transnational Thematic Feedback Meeting</td>
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2 INTRODUCTION

Building on the identification of pivotal issues and controversies in the ReSOMA Discussion Briefs (WP1), ReSOMA Synthetic Policy Briefs (henceforth: Policy Option Briefs or POBs) provide an overview of available evidence and new analysis of policy alternatives. They take stock of existing literature of policy solutions on asylum, migration and integration, highlight the alternatives that can fill key policy gaps and map their support among various stakeholders. The POBs described in this deliverable are based on the preliminary mapping of policy options available with regard to every topic which is featured in the D2.1 Synthetic Policy Briefs delivered in M8. In particular, D2.7 Synthetic policy briefs is a consolidate version of a number POBs briefs included in D2.1 that went through a reality-check process through the involvement of EU and national stakeholders at the Transnational Thematic Feedback Meetings (TTFM) (see deliverable D2.5 for more information on this activity).
3 THE 2.7 POLICY OPTION BRIEFSTITLE OF SECTION

3.1 MAPPING OUT THE AVAILABLE POLICY OPTIONS

Under the ReSOMA project proposal the D2.7 Synthetic Policy Briefs @M11 (renamed Policy Option Briefs (POBs)) are consolidated versions of the D2.1 Synthetic Policy Briefs @M8 (renamed Policy Option Briefs) that went through a reality-check process by means of the D2.5 Transnational Thematic Feedback Meetings. As a result, the timeline of the D2.7 Synthetic Policy Briefs (POBs) depended on WP2 activities’ outcomes.

First and foremost, between November and December 2018 MPG and CEPS coordinated the desk research on the 9 specific topics identified under WP1 to put forward what was considered the most effective policy options that could fill the key gaps at EU/national level and improve the quality of the responses to the evolving EU and national policy agenda. The research was conducted in cooperation with the lead experts on asylum, migration (ISMU) and integration (EUR). As a matter of fact, MPG and CEPS asked lead experts to provide their input following a specific template in order to provide a more in-depth analysis of policy proposals suggested by leading scholars and the evidence put forward to support these proposals.

MPG and CEPS then analysed these inputs and started drafting the POBs included in D2.1 outlining the most effective policy options. The POBs were also drafted in a continuous dialogue with the virtual research working group (see D2.3) whose task was to reply to specific questions from the lead experts, MPG and CEPS and to give an overall feedback on content.

3.2 CONSOLIDATING THE D2.1 POLICY OPTION BRIEFS

In the project proposal, partners pledged to produce three different POBs – one per area to include in the document D2.7. In an effort to properly anchor the ReSOMA activities to the fast-evolving policy framework, MPG and CEPS proposed an implementation plan of WP2 and WP3 that was not centred around the 9 topics of Y1 but rather around cross-cutting themes – 1 per each area - that would be likely to be pushed forward in the EU policy agenda:

1) Externalisation of EU Asylum Policy
2) Crackdown on NGOs assisting migrants and refugees
3) The future of EU (internal) funding for migrant integration

By debating on approving the three cross-cutting themes at the 7th (21/09/2018) and the 8th SG Meeting (17/10/2018), partners became aware they should decide carefully how and when to organise the Transnational Thematic Feedback Meetings, as the outcome of such events was to feed into the consolidated versions of the POBs (hence the D2.7). The project Officer Yuri Borgamm-Prebil was informed about the new implementation plan of both WP2&3 in an email of the 30 October 2018 and resent on the 27th November 2018.

The content and timing of all three meetings had an impact on the drafting of the final D2.7 POBs. While initially partners thought that every single event would cover one of the 9 topics at a time, over time they became increasingly convinced there would not be a perfect correspondence. As a result, four POBs in D2.7
were drafted covering 4 topics: 2 for Integration, 1 for Asylum and 1 for Migration. The table below features all the topics and the corresponding area. The topics in bold are the ones who have been included in the TTFB and were covered in the corresponding D2.7 POB.

<table>
<thead>
<tr>
<th>Topics briefs</th>
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<tr>
<td>- Disembarkation platforms related to safe third country debate</td>
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<td>- Internal integration funding/MFF proposals related to cities as service providers</td>
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<td>- Internal integration funding/MFF proposals related to inclusion of undocumented</td>
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<td>- Internal integration funding/MFF proposals related to mainstreaming integration</td>
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The timing of the TTFM affected the drafting process of D2.7 POBs. The meeting on the Crackdown on NGOs took place on 21/11/2018 and enabled MPG and CEPS to consolidate the D2.1 POB to get the final D2.7 version in early 2019. On the other hand, the meetings on Funding and on the Externalisation of EU Asylum Policy were organised at a later stage, respectively on 14/03/2019 and on 29/04/2019. As a result, the remaining three D2.7 POBs were finished between April and May 2019. Despite the delays incurred, it should be noted that delays in ending WP2 did not affect the beginning of Y2, whose preparatory work was done as early as January 2019 (@M11). The final version of the four D2.7 POBs are available as Annexes to this document.

### 3.3 Dissemination of the D2.7 Policy Option Briefs

The different degree of consolidation between D2.1 and D2.7 POBs had an impact on the dissemination activities. With the agreement of the Consortium, ISMU uploaded the four D2.7 POBs onto the ReSOMA Platform and is gradually uploading the D2.1 briefs as they get finished by MPG and CEPS. ISMU discussed over the online dissemination of WP2 briefs with PICUM, the partner that is in charge of the relevant task (T5.2) and chairs the ReSOMA Communication Task Force. It was decided that in order to prioritise advanced
outputs and avoid confusing the audience, the four D2.7 POBs would be disseminated on the ReSOMA Twitter account while a comprehensive update email with the four D2.7 POBs and the five D2.1 POBs would be sent to the members of the Expert Database to conclude Y1 (June 2019).

In scheduling the tweets, ISMU and PICUM reached out to the Communication Task Force and identified relevant opportunities to scale up dissemination of specific D2.7 POBs. The tweets are featured below:
How to protect solidarity with #migrants & #refugees?

At @ResOMA_EU we mapped options to reform the #FacilitationDirective & funding for #civilsociety.

Read more here: buff.ly/2Qe3S00

As #EU leaders discuss today the new #Eubudget in #Sibiu, check out @ResOMA_eu briefs mapping alternatives on the table for #integration of #migrants

buff.ly/2YcJlw
CONCLUSIONS

Four D2.7 POBs have been produced following the WP2 and WP3 implementation plan and the cross-cutting themes that underpinned all activities. The D2.7 POBs have been disseminated online and are available on the Platform.
4 ANNEXES – D2.7 Synthetic Policy Briefs - POBs
Policy Option Brief

Crackdown on NGOs assisting refugees and other migrants*

1. INTRODUCTION


International and regional organisations, including human rights bodies and other standard-setting institutions, European institutions and agencies, national policymakers, civil society, private businesses and other stakeholders have been putting forward various recommendations to prevent or discourage the criminalisation of solidarity with refugees and other migrants. Some of these proposals aim to reform the EU legal framework delineated by the Facilitators Package (Bozeat et al. 2016, Carrera et al. 2016) while others also suggest addressing the broader phenomenon of ‘policing humanitarianism’ (Carrera et al. 2019) and tackling the underlying reasons for migrant smuggling (Zangh, Sanchez and Achilli 2018, Carrera et al. 2018, Fekete 2018).

As highlighted in the initial ReSOMA Discussion Brief (Vosyliute and Conte 2018), the Facilitators Package contains several legal flaws that increase the risks of misguided criminal prosecution of NGOs and volunteers who provide humanitarian assistance to refugees and other migrants. The Facilitators Package is greatly criticised for its incoherence with international law standards, namely with the UN Protocol against Migrant Smuggling (UN General Assembly 2000). Its main shortcomings are the lack of a financial or other material benefit requirement to establish the crime of ‘facilitation of entry’, and the voluntary character of the humanitarian exemption from criminalisation (FRA 2014, the UK House of Lords 2015, UNODC 2017; Carrera

* By Carmine Conte, Migration Policy Group & Lina Vosyliūtė, Centre for European Policy Studies
et al. 2016, Bozeat et al. 2016, Carrera et al. 2018, Fekete, Webber and Edmond-Pettit 2017). Civil society and academia, as well as various institutions, including the European Union Fundamental Rights Agency (FRA) and United Nations Office on Drugs and Crime (UNODC), widely agree that in addition to the above-mentioned legal flaws, the phenomenon of the criminalisation of solidarity has emerged partly due to an incorrect transposition, implementation and interpretation of the Facilitators Package at European and national levels, which is not in compliance with fundamental rights safeguards. However, so far there have been no infringements brought before the European Court of Justice by the Commission on this question (Carrera et al. 2018). ReSOMA task force participants propounded that political priorities have shifted in the aftermath of the so-called ‘refugee humanitarian crisis’ in Europe and a “restrictive and security-driven approach to migration management emerged as the ‘common lowest denominator’ on which EU Member States could agree and show some sort of solidarity at the EU level” (ReSOMA 2019: 17).

The very design of the EU Facilitators Package seems to be problematic – ‘anti-smuggling’ laws have not been framed in terms of criminal justice, but rather as migration management tools. This flaw is capable of seriously undermining the general logic of criminal justice that has numerous checks and balances, for example, to detect and prevent misguided prosecutions at a very early stage (The UK House of Lords 2015, Carrera et al. 2016, Bozeat et al. 2016, Carrera, Allsopp and Vosyliute 2018, Carrera et al. 2018, Fekete 2018). ReSOMA Task Force participants also highlighted that although “episodes of criminalisation of solidarity towards migrants were already taking place in Europe before 2015, during the following years the phenomenon was significantly amplified” (ReSOMA 2019: 19).

The crackdown on NGOs is a multi-faceted phenomenon intrinsically connected with the protection of EU founding values, such as democracy, the rule of law and fundamental rights. The attack on NGOs assisting refugees and other migrants is therefore highly visible in national contexts of rule of law backsliding like in Hungary and Poland, and also in contexts where the governments were interested in speeding up returns, were trading fundamental rights and creating a ‘hostile environment’ towards refugees and other migrants, like in the UK, France, Italy and Belgium (Allsopp 2017, Youngs and Echague 2017, Szuleka 2017, Carrera et al. 2018, Carrera et al. 2019). The crackdown on NGOs can manifest as silencing critical civil society actors through limiting their access to public funding, and as imposing various disciplinary measures that limit NGOs’ access to clients, thus raising a veil of suspicion about the organisations’ activities – with EU agencies, law enforcement or local authorities subsequently being instructed to supervise these NGOs closely (Carrera et al. 2019).

The public funding is a particularly sensitive and indirect measure that some member states have used in order to silence human rights-watchdog or other critical NGOs, to make them ‘play along’ or even implement political decisions that are in opposition to their ethos (Szuleka 2017, Vosyliute and Conte 2018, Carrera et al. 2018, Westerby 2018a,
Carrera et al. 2019). Various types of funding, including EU funds such as the AMIF and ESF that are aimed at supporting civil society projects, lack sufficient safeguards from such funds being misused by governments, and in particularly - in the context of rule of law backsliding. For example, one of the recent reports assessing AMIF funds stresses that “there is an overall lack of transparency within National Programmes in areas such as priority-setting, project award decision-making and – in particular – the rate and nature of programme implementation (Westerby 2018a: 9).

Against this background, this Policy Options brief maps the policy recommendations proposed by the main stakeholders and researchers to remove hurdles for NGOs to operate freely and uphold the values of democracy, rule of law and respect for fundamental rights, as enshrined in Article 2 of the Treaty on European Union (TEU), and also as provided for in the Charter of Fundamental Rights of the EU (CFREU) - the respect for human dignity, freedom of association, freedom of speech, freedom of conscience, equality and non-discrimination.
2. IDENTIFYING AND MAPPING KEY POLICY OPTIONS

2.1 Migrant smuggling or humanitarian assistance: proposals to reform the Facilitation Directive

The central issues are the legal framing and the implementation of Art. 1(2) of Directive 2002/90 which allows Member States to decide whether civil society actors and family members acting without any profit motive should be exempted from criminalisation of facilitation of entry (FRA 2014, the UK House of Lords 2015, Carrera et al. 2016, Bozeat et al. 2016, UNODC 2017, Fekete, Webber and Edmond-Pettit 2017, Carrera et al. 2018, Vosyliute and Conte, 2018). The reports mentioned above also reached the conclusion that the EU Facilitation Directive is framed vaguely so as to allow Member States to criminalise any person who “intentionally assists a migrant to enter, or transit across, the territory of a Member State” (Article 1 para. 2 of the Directive).

The European Union Agency for Fundamental Rights (FRA) has noted that some Member States have declared exemptions on grounds of humanitarian assistance (FRA 2014). However, empiric research shows that prosecutions of volunteers and NGOs still take place even in those countries where official declarations have been made (Carrera et al. 2016, Fekete, Webber and Edmond-Pettit 2017, Heller and Pezzani 2017, Landry 2017, Carrera et al. 2018, Vosyliute and Conte, 2018). The reports mentioned above also reached the conclusion that the EU Facilitation Directive is framed vaguely so as to allow Member States to criminalise any person who “intentionally assists a migrant to enter, or transit across, the territory of a Member State” (Article 1 para. 2 of the Directive).

Empirical research shows that humanitarian exemptions may be limited to situations of “state of necessity”, as for example in Italy, and exclude the broader scope of helping refugees and migrants (Landry 2017, Carrera, Allsopp and Vosyliute 2018, Carrera et al. 2018). The legal gaps and barriers to exempting humanitarian assistance have led to discussion on what constitutes ‘genuine humanitarian’ acts (European Commission 2018 k). Such discussion aims to exclude civil disobedience and activist citizen mobilisation from ‘humanitarian exemption’. The question is essentially: Should the EU and its Member States have a wide margin of appreciation to criminalise any “intentional assistance” to refugees and other migrants to enter the EU, leaving out only the case that is explicitly permitted as ‘genuine’, or should the EU set the standard so that its Member States only investigate and prosecute behaviour that reaches the threshold of a ‘crime’ and has a clear element of ‘harm’ and/or ‘criminal intent’?

The former type of discussion has been proposed by some governments and the European Commission with an argument that the EU’s competences in criminal law are rather limited (2018k), while the latter type of discussion has been proposed by the European Parliament (2018a) recalling that the explicit exemption of humanitarian assistance in national laws in both Italy and Greece (Fekete, Webber and Edmond-Pettit 2017, Heller and Pezzani 2017, Carrera, Allsopp and Vosyliute 2018).

The European Parliament (2018a) recalling that the
EU has competence to ensure how fundamental rights are protected. In addition, the EU has actually gained more competences in the area of criminal law with the Treaty of Lisbon (Carrera, Hernanz and Parkin 2013), and on several occasions has exercised this new competence, for example to subsequently harmonise anti-human trafficking laws (Carrera and Guild 2015).

In academic research there has also been a proposal to better define the crime of migrant smuggling, so that limited law enforcement resources can be invested in criminal cases worth investigating for the purposes of public interest as opposed to in the preventive policing of civil society actors (Carrera et al 2016, Landry 2017, Fekete, Webber and Edmond-Pettit 2017, Carrera et al. 2018).

To address the ongoing criminalisation of solidarity various policy proposals have been put forward by diverse civil society actors, such as PICUM, Social Platform, ECRE, the Red Cross EU office, Amnesty International, Médecins sans Frontières (MSF), FEANTSA, CIVICUS, Human Rights Watch, Frontline Defenders, and many others. For example, the European Citizens’ Initiative “We are welcoming Europe” has mobilised more than 170 civil society organisations calling for the decriminalisation of humanitarian assistance. Some suggestions have also come from international and regional human rights bodies or even from the European institutions and agencies (FRA 2014, UNODC 2017, FRA 2018, European Parliament 2018a, Council of Europe, Venice Commission 2018; Council of Europe, Commissioner for Human Rights 2018; United Nations Human Rights Committee 2018).


In this ReSOMA Policy Options brief we further develop four proposals that are not mutually exclusive and could be seen as complementary:

- legislative revision of the Facilitators Package that requires ‘financial gain or other material benefit’ to trigger investigation into the crime of facilitation of entry/transit and ‘unjust enrichment’ for a stay in the EU;
- legislative revision of Article 1(2) of the Facilitation Directive to make the ‘humanitarian exemption’ clause mandatory;
- implementation of ‘firewalls’ between civil society and law enforcement;
- independent monitoring of implementation of the Facilitators Package including via a designated observatory on criminalisation of civil society.
2.1.1 The criterion of ‘financial gain or other material benefit’

The UN Protocol against the Smuggling of Migrants by Land, Sea and Air sets an international standard in the area (UN General Assembly 2000). Article 6 of the UN Protocol provides the international threshold to criminalise the behaviour as ‘migrant smuggling’ when it is done for profit motives. The element of financial gain in this context is the crucial indicator of criminal intent on the side of smugglers (UNODC 2004, UNODC 2017). The European Union Agency for Fundamental Rights (FRA) underlines that all EU Member States, except Ireland, have ratified the UN Protocol against the Smuggling of Migrants (FRA 2018).

However, the EU Facilitators Package includes the criterion of ‘financial gain or other material benefit’ as a requirement to establish a basis of crime only for the facilitation of stay and residence, but not for entry and transit. Yet even for the situations of stay and residence, the profit element is transposed only in half of the EU Member States (FRA, 2014) and in addition, even where it is required, general accommodation or transportation fees can be considered as ‘an element of profit’ without requirement to prove ‘unjust enrichment’ from the situations of smuggled migrants (the UK House of Lords 2015, Carrera et al. 2015, UNODC 2017, Carrera et al. 2018).

2.1.2 The exemption on grounds of humanitarian assistance

The United Nations Office on Drugs and Crime (UNODC) clarifies that the Protocol against the Smuggling of Migrants does not require states to criminalise or take other action against groups that smuggle migrants for “charitable or altruistic reasons, as sometimes occurs with the smuggling of asylum seekers” (UNODC 2004).

As the EU Facilitators Package does not contain a ‘financial and material benefit requirement’ various international and regional bodies (United Nations Human Rights Committee 2018, UNODC 2017, Council of Europe, Venice Commission 2018; Council of Europe, Commissioner for Human Rights 2018), EU institutions and agencies (European Union Agency for Fundamental Rights 2014 and 2018, European Parliament 2018a) have therefore also recommended the introduction of an obligatory provision under EU law that expressly exempts humanitarian assistance by civil society organisations or individuals from criminalisation.

This policy option is complementary to the first one and widely supported among civil society stakeholders (see for example, PICUM 2017, Social Platform 2016, Red Cross EU Office 2017). It is also one of the calls of the European Citizens’ Initiative “We are welcoming Europe, let us help!” that is supported by more than 170 civil society organisations, and also by a separate Civic Space Watch initiative. Various forms of mobilisation calling for humanitarian exemption have come about as a reaction to concrete prosecutions – for example, the petition submitted to the European Parliament’s Committee on Petitions by Paula Schmid Porras on behalf of PROEM-AID (Schmid Porras 2017). This petition recommends revising Article 1(2) and specifying that Member States “shall not impose sanctions” on those who provide
humanitarian assistance to undocumented migrants on non-profit grounds (see, for instance, Porras-Schmid 2017, Social Platform 2016).

The impact assessment of the Facilitators Package conducted by the ICF also highlighted that the Facilitation Directive does not effectively discourage Member States from criminalising civil society organisations and should therefore be amended so as to prohibit such attempts (Bozeat et al. 2016). The evidence for the need to exempt humanitarian assistance as provided by civil society actors is also widely supported by research (for example, Portes, Fernandez-Kelly and Light 2012, Van der Leun and Bouter 2015, Carrera et al. 2016, Gkliati 2016, Fekete, Webber and Edmond-Pettit 2017, Landry 2017, Carrera, Allsopp and Vosyliute 2018, Carrera et al. 2018, Fekete 2018, Carrera et al. 2019). By contrast, in its REFIT exercise, the Commission disregarded the most acute concern regarding insufficient protection of actors providing humanitarian assistance, which was expressed by more than 1,780 individuals and was prevalent among various categories of stakeholders, with the exception of Member States (European Commission 2017: see Annex II “Stakeholders Consultation”, p. 49).

Research conducted after the Commission’s REFIT exercise indicates that prosecutions of humanitarian actors continue to increase (Fekete, Webber and Edmond-Pettitt 2017, Carrera, Allsopp and Vosyliute 2018, Carrera et al. 2018, Carrera et al. 2019). This is happening despite the number of arrivals of refugees and migrants having substantially decreased to levels estimated before 2015.

2.1.3 Implementing firewalls

Civil society actors and researchers also call on the EU institutions to develop guidelines and funding schemes for implementing ‘firewalls’ between civil society and law enforcement which guarantees safe humanitarian assistance and access to justice (Carrera et al. 2018, Vosyliute and Joki 2018, Carrera et al. 2019). This policy option is supported among civil society and social partners, for example PICUM (2017), FEANTSA (2017), Social Platform (2016) and ETUC (2016).

The concept of ‘firewalls’ was first proposed with the aim of de-coupling the provision of public services, and fundamental rights mandates, from immigration law enforcement (Crepeau and Hastie 2015). ‘Firewalls’ seek to prevent immigration enforcement authorities from accessing information concerning the immigration status of individuals who seek assistance (for example police or hospital, assistance) or services (shelters, NGOs) (Crepeau and Hastie 2015).

The concept of ‘firewalls’ was also discussed in the ReSOMA discussion brief as a key condition for the social inclusion of undocumented migrants (Vosyliute and Joki 2018). The firewalls have been also proposed by the Council of Europe, European Commission against Racism and Intolerance (ECRI) (2016) and considered at UN-level discussions on the Global Compact on Migration. The argument of setting up ‘firewalls’ has been recently extended to civil society actors, to protect their mandate, when cooperation with law enforcement is
2.1.4 The independent monitoring of implementation of the Facilitators Package

The evidence brought by civil society and researchers suggests the need for systematic and independent monitoring of the respect of the human rights of migrants, the protection of civil society free space and the enforcement of the Facilitators Package and/or broader immigration policies in compliance with fundamental rights.

An initial study for the European Parliament’s LIBE committee has suggested better monitoring systems (Carrera et al. 2016: 11):

“Member States should be obliged to put in place adequate systems to monitor and independently evaluate the enforcement of the Facilitators Package, and allow for quantitative and qualitative assessment of its implementation when it comes to the number of prosecutions and convictions, as well as their effects.”

The study proposed that all EU Member States should therefore collect and record annually the following data: “the number of people arrested for facilitation, the number of judicial proceedings initiated; the number of convictions along with information about sentencing determination; and reasons for discontinuing a case/investigation” as well as the effects of such investigations (Carrera et al. 2016: 65).

The 2018 update study reconsidered the approach in light of the political context and the rule of law backsliding in some EU Member States. It proposed more independent and decentralised mechanisms that could capture politically motivated misuse of the Facilitators Package to silence, intimidate and prosecute civil society actors to feed into a broader EU Rule of Law monitoring mechanism.

The update study proposed launching a European Parliament’s Inquiry into misguided prosecutions of civil society actors, enabling civil society to put forward cases via the Strategic Litigation Fund. The inquiry would also support civil society via EU Values Funding “to collect evidence showing non-compliance with the EU’s legal framework and submit it to the European Commission, so as to enable it to start infringement procedures against a Member State or EU institution/agency” (Carrera et al. 2018: 114).

In addition, a proposal was put forward to set up an independent observatory that would establish a scientifically rigorous method to collect and analyse early warning signs of ‘policing humanitarianism’ (Carrera et al. 2018: 114):

“The observatory could communicate the emerging signs of systemic and institutional cases to the European Commission, DG HOME and DG JUST, the European Parliament LIBE and PETI Committees and the EU Fundamental Rights Agency. The observatory could also collect evidence of risk or threat of serious and/or systemic breach of the EU’s founding values and submit it before the rule of law mechanism that was earlier proposed by the European Parliament.”
ReSOMA Task Force participants suggested that in addition to “independent observatory overseeing the free civil society space and the protection of human rights’ defenders”, the **EU agencies** that gather various types of data during their activities could use and analyse them in order to protect free civil society space (ReSOMA 2019: 20).

### 2.2 How to ensure funding and protection of free space for civil society to assist refugees and other migrants?

As explained in the ReSOMA Discussion Brief, national and EU funding can also be **misused to intimidate and silence** critical organisations that assist refugees and other migrants or that advocate for their human rights (Vosyliute and Conte 2018).

Funding rules developed by several Member States for National Programmes of AMIF and also for other EU funds may give excessive discretionary powers on the side of national authorities on how these funds are used (Westerby 2018a). The same report highlights how “political priorities can influence the content and scope of AMIF CfPs (Calls for Proposals)” (Westerby 2018a: 9). For example: CfPs in the Czech Republic have tended to address government priorities related to security concerns; in Slovakia and Estonia the calls for proposals were highly “detailed and proscriptive” and were seen more as tenders by civil society organisations; in Bulgaria, due to the suspension of national integration policies there was “very slow overall implementation” of this priority area and therefore organisations working in this field could not count on AMIF funding (Westerby 2018a: 29).

Empiric research has also found subtler forms of political pressure on civil society via public funding that result in self-censoring due to fears of losing public contracts and/ or access to clients also in countries where rule of law is not considered to be backsliding. For example, interviewees representing civil society organisations providing various types of assistance for asylum seekers in hot spots in Italy refused to comment on forced finger printing practices (Carrera et al. 2019). Similarly, organisations in Greece shared their experiences of not being allowed in refugee camps due to the organisations’ critical reports (Carrera et al. 2019).

To overcome these pressures, research and stakeholders propose that where the rule of law is backsliding, the European Commission should firstly to monitor rule of law situation in the EU Member States and stop EU funding to such governments, and secondly, instead provide more direct funding possibilities for civil society.

#### 2.2.3 Suspension of funding for governments violating the rule of law in the area of migration and asylum

Researchers warn that rule of law backsliding has the effect of shrinking space for NGOs and in particular those who assist refugees and migrants (Westerby 2018a, Szuleka 2018, Carrera et al. 2018). In some countries, NGOs experience increasing difficulties in promoting European values and are targeted by the governing majority and other fundamental democratic actors, such as the judiciary or independent media.
Also, the legislative framework has been changed in the context of rule of law backsliding in Poland and Hungary so as to restrict the access to funding for civil society providing humanitarian assistance (Szuleka 2018). In Hungary, the government initiated a campaign against the national operator of EEA/Norway grants in 2014, Lex NGOs, a 25% tax for civil society working in this field and blanket authorisation to withdraw any AMIF received funding (Szuleka 2018: 15). In addition, EU funding has been misused as to make civil society more obedient through funding:

“In Hungary, AMIF applicant organisations must sign a blanket authorisation allowing the Responsible Authority (the Ministry of the Interior) to directly withdraw money from the organisation’s bank account at any point during and after the project implementation period. Both this requirement and rules preventing NGOs from charging management and core operational costs to AMIF projects means many organisations are reluctant to submit AMIF proposals” (Westerby 2018 a).

Similarly, in Poland – “for example, in 2016, the Ministry of Interior announced that the call for proposals within the Asylum, Migration and Integration Fund (worth EUR 625,000) was annulled” and later the law on disbursing the national and EU funding was changed by the Polish Act on the National Institute of Freedom, that “creates a new administrative body which will work under the supervision of the government and without any meaningful participation of the civil society.” (Szuleka 2018: 16).

The Venice Commission has raised its concerns on several occasions, notably as regards the Lex NGOs, stressing that “the context surrounding the adoption of the relevant law and specifically a virulent campaign by some state authorities against civil society organisations receiving foreign funding, portraying them as acting against the interests of society, may render such provisions problematic, raising a concern as to whether they breach the prohibition of discrimination, contrary to Article 14 ECHR” (Venice Commission: 2017 in Szuleka 2018: 16). The European Commission has also reacted to the latter case by already starting infringement procedures against Hungary in 2017. However, to date, Hungary has continued receiving EU funding.

Recent studies on using EU funds in the area of migration and asylum (Šelih, Bond and Dolan 2017, Szuleka 2017, Westerby 2018a and 2018b, Carrera et al. 2018) have therefore recommended tying funding for governments to their respect of the rule of law and the values embodied under Article 2 of the TEU such as human dignity, freedom, democracy, equality and respect for human rights. The broader rule of law debate proposes the establishment of an EU Rule of Law Mechanism, to be instead operated by an independent committee of experts, with inputs from international and regional human rights bodies, European agencies and civil society (Bard et al. 2016).

Another proposal has suggested the establishment of a regular rule of law assessment in the Member States to be carried out by the EU’s Fundamental Rights Agency, with input from the Council of Europe and civil
society (Šelih, Bond and Dolan 2017). In both cases, if the assessment shows breaches of the rule of law, the allocation of funds could be suspended until the state has put in place policy reforms in line with the values of the EU treaties (Bard et al. 2016, Šelih, Bond and Dolan 2017).

To monitor the shrinking space for civil society and assess the respect of rule of law, researchers and stakeholders have proposed developing an EU Civil Society Shadow Reporting or Complaints Mechanism that feeds into the EU Rule of Law Mechanism and the work of EU Agencies in countering smuggling and migration/border management policies (Carrera et al. 2018).

In addition, research has also recommended that the disbursement of the AMIF and Internal Security Fund (ISF) should be subject to regular reports of the European Court of Auditors and European Ombudsman prior to their disbursement, and that their “disbursements for Member States should be conditional on the absence of political prosecutions against civil society” (Carrera et al. 2018: 114).

2.2.2. Direct financial support for NGOs and the monitoring of funding

Researchers have proposed that the European Union should provide more direct funding schemes for civil society in the area of migration and asylum across the EU (Szuleka 2018, Westerby 2018a, Carrera et al. 2019). For example, they have proposed a “new financial mechanism designed to provide financial support for civil society organisations working for human rights protection, rule of law and democracy” (Szuleka 2018). The fund should not be dependent on national authorities and should cover those costs related to the activities undermined by the rule of law backsliding or political pressures such as monitoring, advocacy or strategic litigation. The European Parliament and Commission have been discussing the establishment of the European Values Fund and Strategic Litigation fund (European Commission 2018 a-j). Furthermore, via current and future AMIF National Programmes the EU “should empower civil society organisations to carry out their complementary role, including by allocating and distributing reasonable minimum percentages of programme funding to civil society organisations in the asylum and integration priority areas” (Westerby 2018a).

Where the rule of law is not affected, civil society actors should be regularly involved and consulted in the work of the steering and monitoring committees dealing with the allocation of EU funds in the Member States, in line with the Partnership Principle (Westerby 2018a).

The introduction of a systematic EU funding monitoring mechanism has also been suggested. This would be operated by the Commission to assess how Member States comply with the requirements of transparency, communication and information sharing (Westerby 2018a).

ReSOMA Task Force participants all agreed that “different instruments promoting and strengthening the respect of rule of law and fundamental rights should be prioritised and awarded with appropriate funding mechanisms” (ReSOMA 2019: 20).
highlighted the need to protect critical civil society infrastructure at national level.
3. MAPPING THE DEBATE ON SOLUTIONS AT EU LEVEL

3.1 Revising the Facilitators’ Package, adopting guidelines and ensuring monitoring

3.1.1. Revision of Facilitators’ Package

As mentioned in the Introduction, the majority of research reports and studies analysed for this mapping exercise (for example, Portes, Fernandez-Kelly and Light 2012, Van der Leun and Bouter 2015, Carrera et al. 2016, Carrera, Allsopp and Vosyiute 2018, Carrera et al. 2018, and others) and various civil society actors (see for example, PICUM 2017, Social Platform 2016, and the Red Cross EU Office 2017, as well as many contributors of Civic Space Watch and the European Citizens Initiative “We are welcoming Europe, let us help!”) provide evidence that NGOs assisting refugees and other migrants are experiencing unprecedented policing of their activities.

All very much emphasise that the lack of a “financial and other material benefit” requirement, as well as the lack of a mandatory exemption on the ground of humanitarian assistance under the Facilitation Directive, contribute to legal uncertainty and increase the risk of being prosecuted for helping refugees and migrants.

As a result, they propose revising the Facilitators Package in compliance with the UN Protocol against the Smuggling of Migrants. They also propose implementing this in line with the EU’s founding values, such as democracy, fundamental rights and the rule of law and the Charter of Fundamental Rights of the EU.

The complete revision of the Facilitators Package in the post-Lisbon framework, and not the mere rewording of it, is needed as “with the Treaty of Lisbon entering into force, and in particular, after its Protocol 36 on ‘Transitional Provisions’ (Title VII, Article 10), came to an end in December 2014, the Commission had new possibilities to inject ‘more EU’ within the former ‘third pillar’ legislation, meaning that new legislation in criminal matters would move beyond ‘minimum approximation’ towards ‘more harmonisation”. (Carrera, Hernanz and Parkin 2013 in Carrera et al. 2018:12).

In light of an increasing criminalisation of humanitarian actors, the European Parliament (2018a) adopted a resolution on 5 July 2018 to end the criminalisation and punishment of organisations and individuals who assist migrants in need. The European Parliament (2018a) expressed “concern at the unintended consequences of the Facilitators Package on citizens providing humanitarian assistance to migrants and on the social cohesion of the receiving society as a whole”.

The resolution sets out that acts of humanitarian assistance should not be criminalised, as required by the international standards of the UN Protocol against the Smuggling of Migrants. It expressly emphasises that organisations and individuals who assist migrants play a crucial role in supporting national competent authorities
and ensuring that humanitarian assistance is provided to migrants in need.

The European Parliament (2018a) has outlined that a very limited number of Member States have transposed the humanitarian assistance exemption included under the Facilitation Directive, and has noted that “the exemption should be implemented as a bar to prosecution”. The European Parliament (2018a) has therefore called on Member States to “ensure that prosecution is not pursued against individuals and civil society organisations assisting migrants for humanitarian reasons” and to monitor the compliance for this provision.

Nevertheless, the unit responsible within the European Commission’s Directorate General for Migration and Home Affairs continues to argue in line with its REFIT conclusions (European Commission 2017) that there is not enough evidence to reform the Facilitation Package, or that reported cases are not sufficiently related to the transposition of the Facilitators Package, but are related to the wider political context and it is therefore argued that a change of the Directive would not prevent the criminalisation of civil society actors (European Parliament, Committee of Civil Liberties Justice and Home Affairs 2018).

3.1.2. Adoption of guidelines

In addition, the legislative reform needed to come with accompanying practical guidance on what is (not) a crime on migrant smuggling. Clear guidelines could also help to develop more rigorous monitoring and increasing financial and political accountability are also considered as necessary steps to tackle the criminalisation of solidarity (Carrera et al. 2018).

The European Parliament (2018a) has urged the “Commission to adopt guidelines for Member States, which clarify those forms of facilitation that should not be criminalised, in order to ensure clarity and uniformity in the implementation of the current acquis, including Article 1(1)(b) and 1(2) of the Facilitation Directive”, thus covering not only the facilitation of entry and transit(Article 1(1) (a) of the Directive) but also the facilitation of residence and stay; and the humanitarian exemption clause.

The Commission seems to be supportive of this policy option. For example, European Commission in response to the letter from Race International Institute, noted that it will “engage with relevant players, primarily civil society organisations as well as national authorities and EU agencies such as Eurojust and the FRA, to get a better understanding of the application of the existing rules, supporting both the effective implementation of the existing legal framework and a reinforced exchange of knowledge and good practice between prosecutors, law enforcement and civil society in order to ensure that criminalisation of genuine humanitarian assistance is avoided” (European Commission 2018).

However, ReSOMA transnational meeting participants, many of whom are legal practitioners, insisted on the legislative change as a key priority. In their view, accompanying measures only, as proposed by the Commission’s REFIT, would not change
legal interpretations by national prosecutors and judges (ReSOMA 2018).

By contrast, the policy recommendation to put firewalls in place between civil society and law enforcement does not seem to find strong political support in the European Commission with the exception of Directorate-General for Regional and Urban Policy (DG REGIO) (2018). As mentioned in the Discussion Brief on “Social Inclusion of Undocumented (Vosyliute and Joki 2018), the Council of Europe, European Commission against Racism and Intolerance (ECRI) (2016) recommended European governments to implement firewalls between the service providers and immigration controls. The ECRI recommendations urge governments to “ensure that no public or private bodies providing services in the fields of education, health care, housing, social security and assistance, labour protection and justice are under reporting duties for immigration control and enforcement purposes” (ECRI 2016).

3.1.3. Independent monitoring of implementation of the Facilitators’ Package

The European Parliament has called for 'adequate systems to monitor the enforcement and effective practical application of the Facilitators’ Package, by collecting and recording annually information about the number of people arrested for facilitation at the border and inland, the number of judicial proceedings initiated, the number of convictions, along with information on how sentences are determined, and reasons for discontinuing an investigation" (European Parliament, 2018a). This could set a blueprint on what kind of monitoring the European Commission should do, although it is different from the independent observatory that should be set up by academia and civil society.

In the closed-door meeting with academics and civil society stakeholders in May 2018, the European Commission proposed developing an inter-governmental observatory of cases of criminalisation within the infrastructure of the European Migration Network (EMN), where usually national Ministries of Interior or their selected agencies represent Member States.

3.2 Access to funding for NGOs assisting refugees and other migrants

Various reports analysing EU funding schemes (Carrera et al. 2016, Westerby 2018, Šelih, Bond and Dolan 2017, Szuleka 2018, Carrera et al. 2018, Westerby 2018) support the proposal of empowering civil society organisations to carry out their role by directly allocating reasonable minimum percentages of programme funding or providing more possibilities for direct grants from the European Commission, as opposed to national agencies. This policy option is also promoted by stakeholders such as ECRE and UNCHR that recognise the need for establishing dedicated support systems for civil society organisations during the pre-application and implementation phase of AMIF programmes (see Westerby 2018a and 2018b).

The policy option to allocate minimum funding directly to CSOs has been explicitly supported by the European Parliament
(2018b) and some MEPs have been active in following up a proposal to set up a strategic litigation fund (Youngs and Echague 2017). However, the negotiation process for agreement on the new MFF was still ongoing at the time of writing this policy options brief.

3.3 Rule of law mechanism and funding conditionality

The policy option of reducing funds for Member States that do not comply with basic institutional requirements of the rule of law is mostly supported by researchers and academics (Halmai 2018, Pech 2017, Bárd 2017, Youngs and Echague 2017). The adoption of the conditionality approach within the new Multiannual Financial Framework is considered as a positive avenue to enforce compliance with joint values (Halmai 2018).

Researchers point out that the use of rule of law conditionality may be necessary because of the failure of the traditional mechanism of the infringement procedure and the unanimity requirement for sanctions according to Article 7(2) and (3) TFEU (Halmai 2018). By contrast, civil society organisations have not yet expressly endorsed this policy option that risks penalising the citizens and regions of the Member States concerned, which are greatly in need of financial support through EU funding.

The policy option proposed linking and strengthening EU funds and the respect of rule of law, and is widely supported by the European Parliament (2018b) and the Commission (2018a; 2018b; 2018c).

In 2018, the European Commission (2018a) adopted the proposal for a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States. Moreover, the Commission’s Reflection Paper on the Future of EU Finances, published on 28 June 2017, sets out that: “respect for the rule of law is important for European citizens, but also for business initiative, innovation and investment, which will flourish most where the legal and institutional framework adheres fully to the common values of the Union (European Commission, 2017b). There is hence a clear relationship between the rule of law and an efficient implementation of the private and public investments supported by the EU budget” (Halmai 2018). The budget commissioner, Günther Öttinger, has also declared that EU funds could be dependent on the respect for the rule of law in the 2021-2027 EU budget (Maurice 2017).

The European Parliament has stated in a resolution (2018b) that “recent developments in Hungary have led to a serious deterioration in the rule of law, democracy and fundamental rights, which is testing the EU’s ability to defend its founding values”. The resolution therefore called for: “the European Commission to strictly monitor the use of EU funds by the Hungarian Government”. In addition, on 17 January 2019, the European Parliament voted in favour of the Commission’s proposal to cut funds to EU countries that do not comply with the rule of law (Bayer 2019).
4. MAPPING THE EVIDENCE BROUGHT

4.1 Evidence to change the Facilitation Directive

The evaluation of the Facilitators Package carried out under the Commission’s Regulatory Fitness and Performance Programme (REFIT) carried out between 2014 and 2016 concluded that there was no sufficient evidence to amend the current legal framework. According to the Commission’s assessment, “although perceived risks of being criminalised for providing humanitarian assistance must be taken into serious consideration, they do not appear to be so prominently linked to the legal framework in place as to its understanding and actual application” (European Commission 2017).

The European Commission continues to argue that the revision of the Facilitation Directive was refused because of “the lack of evidence”. During the hearing at the European Parliament’s Committee on Petitions (2018), it was clarified that the European Commission only considers as evidence criminal cases on the grounds of migrant smuggling that ended with successful prosecutions of humanitarian actors. The recent report commissioned by the European Parliament’s Committee on Petitions criticises such a requirement of evidence as it essentially implies failure of criminal justice systems – misguided prosecutions were not challenged by criminal justice checks and balances, and were judged to have enough evidence and/or political pressure to prosecute civil society actors (Carrera et al. 2018). Reports from academia and civil society oppose such a narrow interpretation of what constitutes the ‘evidence’ and that discussion is shifting from evidence-based policy making to the policy-based evidence making (ReSOMA 2019).

Civil society actors point out that the rising number of volunteers and humanitarian actors experiencing suspicion, intimidation, harassment, disciplining and criminal prosecutions for helping migrants in transit since 2015 is the main evidence of the ongoing shrinking humanitarian space for migration work (Red Cross EU Office 2017, PICUM 2017, Social Platform 2016, CIVICUS 2016). Moreover, empiric research illustrates how in a number of the EU Member States such cases have been escalating from suspicion to criminal prosecutions of humanitarian actors (Carrera, Allsopp and Vosyliute 2018, Carrera et al. 2018, Carrera et al. 2019). In addition, legal analysis indicated that national laws on facilitation are a “patchwork of different patterns of criminalisation and exemption” (Fekete, Webber and Edmond-Pettitt 2017). A research carried out by the Race Relations Institute reported the prosecutions of 45 individuals who provided humanitarian assistance under different anti-smuggling or immigration laws in the EU Member States (Fekete, Webber and Edmond-Pettitt 2017).

While the European Commission (2017) in its REFIT found the diverse transposition as a challenge to be remedied by better law enforcement cooperation, and not related to the Facilitators Package itself. However,
various studies and reports point out that the lack of legal harmonisation is still possible because the Facilitators Package is not yet ‘Lisbonised’ and therefore Member States are more free to implement a diversity of practices that contribute to legal uncertainty among civil society actors and service providers (Carrera et al. 2016, Carrera, Allsopp and Vosyliute 2018, Carrera et al. 2018, Carrera et al. 2019).

4.1.1. Financial or other material benefit

Various institutional actors such as the European Union Agency for Fundamental Rights (FRA 2014) and United Nations Office on Drugs and Crime (UNODC 2017) have been arguing that the EU Facilitators Package should be amended in line with the UN standards included under the Protocol against the Smuggling of Migrants so as to narrow and clarify the definition of the crime of migrant smuggling. According to the UNODC Legislative Guidelines (UNODC 2004), the reference to “financial or other material benefit” has been included in the UN Protocol against the Smuggling of Migrants so as to exclude from prosecution groups which pursue legitimate political or social aims, such as humanitarian search and rescue activities or civil disobedience. A requirement of ‘profit motive’ would therefore by default exclude such actors from criminalisation if they do not seek to obtain “financial or other material benefit” when assisting refugees and other migrants (UNODC 2004).

Similarly, various civil society actors, for example, PICUM (2017), Social Platform (2016), CIVICUS (2016), the Red Cross EU Office (2017) and FEANTSA (2017) have been advocating the exclusion of humanitarian assistance and other services for persons in precarious situations, as these services do not seek to profit from the vulnerabilities of smuggled migrants. Rather, their aim is humanitarian, even when fees may be required from clients, for example for shelter and food or transport (the UK House of Lords 2015). An assessment of the EU’s anti-migrant smuggling policies and impact assessment conducted by ICF (Bozeat et al. 2016) also came to a similar conclusion on the need to revise the EU Facilitators Package and to insist on ‘for profit’ motives so as to reduce legal uncertainties among civil society actors and various service providers.

Research further proposes that the profit element should be qualified to cover only “unjust enrichment or profit” and exclude “bona fide” shopkeepers, landlords and businesses” (Carrera et al. 2016, Bozeat et al. 2016, Carrera et al. 2018). The concept of ‘excessive gain’ has been applied at judicial level. For instance, the Austrian Supreme Court found that a taxi driver who assisted refugees to cross the border from Hungary to Austria was not judged to be a smuggler because of the application of standard fees for the service provided (Schloenhardt 2016). The financial gain therefore did not constitute personal benefit in the sense of unjust enrichment.

Due to the absence of such ‘unjust enrichment’ criteria, civil society and service providers across the EU applying standard fees for shelter or food, and even EU citizens who send donations to organisations that provide humanitarian assistance, are not sufficiently protected from criminalisation on the grounds of migrant smuggling (Carrera et al. 2018, Bozeat et al. 2016, Carrera et al. 2019).
4.1.2 Lack of humanitarian exemption

As mentioned in the Introduction, one of the main concerns highlighted in the empirical research is that criminal prosecutions of volunteers have taken place in countries where ‘humanitarian exemptions’ are formally declared, but not respected in practice (Carrera et al. 2019). For instance, civil society organisations conducting proactive search and rescue operations have been investigated and even prosecuted in Italy and Greece (see below), and other countries, despite their humanitarian exemptions (Carrera, Allsopp and Vosyliute 2018).

Repeated criminalisation of Humanitarian actors in Greece

Greek law on facilitation of illegal entry does not criminalise rescue at sea, in line with obligations under the International Convention on the Safety of Life at Sea, the Convention on Maritime Rescue and the UN Convention on the Law of the Sea. Nevertheless, the humanitarian exception has failed to protect volunteers in Greece for the second time. In May 2018 five Team Humanity and PROEM AID volunteers were prosecuted and eventually acquitted from charges of migrant smuggling. However, in August 2018, the Greek police arrested a Syrian refugee, Sarah Mardini, along with a Greek and an Irish volunteer, who were accused of helping migrants enter the country illegally and detained at high security prison (Carrera et al. 2018).

A study commissioned by the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE) on the implementation of the Facilitation Directive precisely outlines that civil society actors (including individual volunteers) should be protected on the grounds of ‘humanitarian assistance’ that “mainly relates to services that assist migrants to access their fundamental rights (health care, shelter, hygiene and legal assistance) and to live with human dignity” (Carrera et al. 2016). Another study highlights that the concept of humanitarian smuggling should refer to “acts facilitating irregular entry that are morally permissible and fall outside the scope of punishable offences under smuggling prohibitions” (Landry 2017). As discussed earlier, the humanitarian exemptions also may be overly narrow (see examples from the UK and France below).

<table>
<thead>
<tr>
<th>Limited humanitarian exemption in the UK</th>
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<td>In the UK, humanitarian motivation is relevant only to sentencing and does not exclude guilt. For example, a 25-year-old volunteer, who tried to bring an Albanian mother and two sons to the UK to join their husband and father, was sentenced to 14 months’ imprisonment (Fekete, Webber and Edmond-Pettitt 2017). This judgment was merely suspended on the grounds that the volunteer had embarked on ‘misguided humanitarianism’.</td>
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<th>Limited humanitarian exemption in France</th>
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<td>In France, explicit exemption is not declared in national laws but came about in July 2018 after the French Constitutional Court interpreted the principle of ‘fraternity’ as covering “the freedom to help others for humanitarian purposes, without consideration for the legality of their stay on national territory” (Allsopp 2018). However, the principle of ‘fraternity’ was not extended to the humanitarian facilitation of entry. On 8 of November 2018, two of seven volunteers involved in NGOs that help migrants (referred to as the ‘Briançon 7’) were charged with “12-month sentences, of which four months are to be carried out behind bars”, while the other five volunteers were issued with “six-month suspended sentences”</td>
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for providing humanitarian assistance to migrants entering France via the French Alps (Clatot 2018). Research indicates that delineations between the ‘facilitation of stay’ and ‘facilitation of entry’ in practice are also blurred and add to legal uncertainty (Carrera et al. 2018).

The European Parliament (2018a) in reaction of ongoing criminalisation of humanitarian actors has called on the European Commission to develop guidelines to ensure that humanitarian assistance is not criminalised. However, the humanitarian exemption needs to be defined.

In its REFIT exercise, the European Commission argued that it is hard to exempt humanitarian assistance since the definition is not clear and may differ across the EU (European Commission 2017). However, the recent study commissioned by the European Parliaments Committee on Petitions suggests that the European Commission should draw on the definition of ‘humanitarian assistance’ as provided by the conclusions of the High-Level European Consensus on Humanitarian Aid, signed by the Council of the EU, European Parliament and European Commission in 2007 (Carrera et al. 2018).

High-Level European Consensus on Humanitarian Aid

The Consensus aims at improving the quality of the EU’s humanitarian response and clarifies the meaning of humanitarian aid. It sets out that “humanitarian aid is a fundamental expression of the universal value of solidarity between people and a moral imperative” (Council and the Representatives of the Governments of the Member States 2008). It emphasises that refugees and internally displaced persons are severely affected by humanitarian crises. The European Consensus on Humanitarian Aid clarifies that the objective is to provide a “needs-based emergency response aimed at preserving life, preventing and alleviating human suffering and maintaining human dignity wherever the need arises if governments and local actors are overwhelmed, unable or unwilling to act” (Council and the Representatives of the Governments of the Member States 2008). Humanitarian aid encompasses different activities such as “assistance, relief and protection operations to save and preserve life in humanitarian crises or their immediate aftermath, but also actions aimed at facilitating or obtaining access to people in need and the free flow of assistance” (Council and the Representatives of the Governments of the Member States 2008).

National courts in Europe also could be inspired by the landmark decision of the Supreme Court of Canada in the case of R. v. Appulonappa (2015 SCC 59).


This judgement provides for a significant legal precedent that clarifies the smuggling prohibition (Landry 2016). The Court ruled that the Immigration and Refugee Protection Act should be interpreted as not applying to: i) persons providing humanitarian aid to asylum-seekers; ii) asylum-seekers who provide each other mutual aid (including aid to family members). In this regard, three categories of conduct should not be prosecuted: i) humanitarian aid to undocumented entrants, ii) mutual aid amongst asylum-seekers, and iii) assistance to family entering without the required documents.

The Canadian Immigration and Refugee Protection Act is very similar to the EU Facilitation Directive as it risks criminalising those individuals who facilitate irregular entry for humanitarian reasons. The SCC found that the law exceeded its legislative purpose of prosecuting criminal organisations. The “broad
punitive goal that would prosecute persons with no connection to and no furtherance of organised crime is not consistent with Parliament’s purpose” (2015 SCC 59). This judgement can be considered as a positive judicial interpretation of laws which criminalise human smuggling. It might help identify material conduct and categories of individuals who fall outside the legal purpose of prohibiting human smuggling.

Against this background, clarity and legal certainty should represent the main guiding principles of the legislative reform of the Facilitation Directive. Political guidelines and accurate legal parameters will ensure better coherence in criminal national laws and reduce unjustified criminalisation of solidarity. The recommended changes should allow a reduction in the fear and intimidation of the social organisations in their work with irregular migrants, and should help to open more national and local funding resources for their assistance activities. EU law would contribute to make the work of city services and civil society organisations easier and safer (Carrera et al. 2018).

4.1.3 The lack of firewall

Some authors argue that the EU Facilitation Directive is disproportionate and unethical as its purpose is to control migration by targeting not only criminal networks but also those who act in solidarity and provide social services due to the lack of firewall (Guild 2010, Allsopp 2012, Provera 2015, Vosyliute and Joki 2018).

Therefore, setting up of a ‘firewall’ would prevent the different modes of ‘policing humanitarianism’, such as the imposition of fines and administrative sanctions, prosecution for migration-related criminal offences, arrest and detention (Carrera et al. 2019). A recent study commissioned by the European Parliament’s Committee on Petitions (PETI) has called for “strict separations between immigration enforcement, public services and civil society mandates” (Carrera et al. 2018). ReSOMA Task Force participants also suggested “the establishment of ‘firewalls’ between civil society and law enforcement authorities” that could be accompanied by necessary training and legislation to delineate the civil society free space (ReSOMA 2019).

In the case of healthcare services provided to irregular migrants, the moral and legal argument is that health care is a human right (Portes, Fernandez-Kelly and Light 2012). Researchers also emphasise that the criminalisation of humanitarian assistance produces direct and indirect negative consequences at the local and regional level that are tasked to respond to the immediate needs of their residents without discrimination (Ambrosini 2015, Van den Durpel 2017, Ryngbeck 2015, see also ReSOMA discussion briefs on Social inclusion of undocumented migrants – Vosyliute and Joki 2018, and Cities as providers of services to migrant populations – Wolffhardt 2018). In fact, cities tackling issues such as social inclusion and public health found that “inclusion costs less than exclusion” and allowed irregular migrants to access fundamental services (Ryngbeck 2015; see also ReSOMA Discussion brief on ‘Cities as providers of services to migrant populations – Wolffhardt 2018).

Policymakers should also acknowledge the social backlash stemming from the criminalisation of single individuals, groups and organisations which provide humanitarian assistance to irregular migrants. When citizens
are prosecuted for acts of humanitarian assistance, this undermines social trust in public institutions and criminal justice systems, and thus civil disobedience and civic mobilisation may follow, as shown in examples in Greece, Italy, Belgium, the UK, Hungary, France (Carrera, Allsopp and Vosyliute 2018, Carrera et al. 2018, Carrera et al. 2019).

The criminalisation of solidarity may undermine social cohesion and trust in national and EU institutions as well as the legitimacy of the EU law. Citizens may disapprove of the work of the institutions by contesting and violating certain laws that are putting into question fundamental rights, democracy and the rule of law. The process of resistance against criminalisation of solidarity is built on the grounds of the EU’s founding values.

4.2 Facilitated access to funding for NGOs assisting refugees and other migrants

Civil society representatives such as UNHCR and ECRE (see Westerby 2018a and 2018b), PICUM (2017) and Social Platform (2016) suggest that EU funding schemes should better enable civil society organisations to carry out their work in the next MMF by granting civil society certain percentages of AMIF programme funding or having more possibilities to obtain direct grants from the European Commission as opposed to from national agencies and ministries.

The improvement of accessibility to EU funds, such as AMIF and ESF, for civil society organisations is crucial as NGOs play a significant role as providers of basic services for refugees and other migrants and in particular for those in an irregular situation. NGOs and cities often step in where the state directly or indirectly refuses to provide essential services and basic rights to irregular migrants (Vosyliute and Joki, 2018; Ambrosini and Van der Leun 2015).

4.3 Rule of law mechanism and conditionality for funding

Researchers (Halmai 2018, Pech 2017 and Bård 2017, Westerby 2018, Šelih, Bond and Dolan 2017) bring forward that financial instruments are among the main EU tools to influence the Member States. To the same extent, stakeholders suggest reinforcing the link between the provision of EU funds to Member States and Member States’ respect for the rule of law and rights (ECRE 2018).

The suspension of EU funds in case of violation of EU fundamental values would be a deterrent mechanism to ensure the respect of the rule of law where other instruments have failed (Šelih, Bond and Dolan 2017). By linking the respect for the rule of law to disbursement of EU structural and investment funds, the EU will have more powerful instruments to ensure that European taxpayers’ money is spent effectively and in line with EU fundamental values (European Parliament 2018b).
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Policy Option Brief

Contributing to global responsibility-sharing for refugees: the role of EU external funding*

1. INTRODUCTION

In recent years, the need to address the long-term consequences of major displacement situations worldwide, first of all those generated by the Syrian crisis, has fostered a renewed debate among international actors on how to achieve sustainable solutions for the 16.9 million refugees worldwide that currently reside in developing regions (UNHCR 2018a). As testified by the text of the Global Compact on Refugees (GCR), endorsed by the UN General Assembly in December 2018, a consensus has been built among key international stakeholders on the need to move away from a paradigm based on indefinite provision of humanitarian assistance towards the adoption of a development-based approach to displacement.¹

Specifically, the GCR emphasises the need to strengthen the resilience of refugees and their host communities, underlying the need to mainstream displacement issues into the development programmes and policies of host countries. In this context, predictable and adequate funding is identified as a key priority for furthering the objectives of the Compact. While needs-driven humanitarian assistance remains a priority, the Refugee Compact underlines the importance of deploying additional development resources, over and above regular development assistance, to improve the socio-economic situation of refugees and their host communities.

Despite being a non-binding document, the Global Compact on Refugees advances a set of new structures and arrangements to strengthen cooperation and solidarity with refugees and host countries. Specifically, the Compact calls for a Global Refugee Forum to be held periodically at

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¹ See “The Global Compact on Refugees. Final Draft” (as of 26 June 2018). Online: https://www.un.org/pga/72/wp-
the ministerial level starting in December 2019, where states and other actors can make pledges in different forms, including financial, material and technical assistance. In addition, the Compact foresees the activation of so-called Support Platforms, composed of a group of states committed to mobilise contributions and support in favour of host countries facing large scale and complex refugee situations.

In light of the momentum raised by the Refugee Compact and the agenda it lays down to foster responsibility sharing for refugees at the global level, it is crucial to reflect on the role that EU external funding can play in implementing the commitments included in the Compact. Addressing this question is particularly relevant considering that EU institutions are currently in the process of negotiating funding priorities for the next Multiannual Financial framework, which will span the period 2021-2027.

Moreover, policy debates on EU priorities for the next financial period follow a period of intense external activism on the part of EU institutions, which in the last few years have mobilised the entire arsenal of EU external funding instruments to deal with the so-called ‘refugee crisis’. To that end, new funding mechanisms, such as EUTFs and the Refugee facility for Turkey have been created, often in a very short timeframe, to address a range of issues related to refugee protection in countries of origin and transit. The legacy of those policy initiatives and their relevance for the future EU external action in the area of refugee protection, however, is far from uncontroversial: many NGOs supporting migrants and refugees’ rights have severely criticised the mobilisation of EU external funding in the context of the previously mentioned financial mechanisms. They see it as being motivated by a containment approach, which runs counter to the rationale on which the Global Compact on Refugees is premised, namely furthering solidarity and responsibility-sharing among the international community.

Against the backdrop of ongoing debates on the role of EU external funding in addressing refugee and migration related issues, this Policy brief provides, as a first step, an account of the experience of ‘emergency instruments’ introduced at the EU level in the aftermath of the ‘refugee crisis’, which underlies the main issues raised by both civil society actors and researchers in relation to these instruments. In a second step, this brief describes some of the key policy options and recommendations to address refugee situations in third countries put forward by relevant stakeholders in relation to the next phase (2021-2027) of EU external funding.
2. THE LEGACY OF EU POLICY RESPONSES TO THE ‘REFUGEE CRISIS’

The priority of mobilising development assistance to support the socio-economic conditions of refugees and local communities in the main hosting countries has gained increasing relevance within the EU agenda in the past few years. The 2016 Commission Communication on Forced Displacement and Development, in particular, took stock of debates conducted in international venues by advocating for the adoption of a “resilience” approach to forced displacement: this implies deploying a set of policy initiatives to harness the productive capacities of refugees, by helping them to access education, housing, livelihoods and services, and by supporting interaction between them and their host community (European Commission, 2016).

To achieve that aim, the 2016 Communication stressed the importance of deploying flexible and predictable funding. EU Trust Funds (EUTF) were singled out as promising instruments for integrating different EU financial sources and additional funding from the Member States. In line with the approach laid down in the Communication, the EU Regional Trust Fund in Response to the Syrian Crisis (the ‘Madad Fund’) endowed with a budget of €1.5 billion, was launched in 2014 to address the long-term educational, economic and social needs of Syrian refugees and host communities in neighbouring countries such as Egypt, Iraq, Jordan, Lebanon and Turkey. In parallel, the EU Emergency Trust Fund for Africa, with a budget of €4.1 billion, was established in the context of the EU-Africa Summit on Migration held in La Valletta in November 2015. The EUTF for Africa targets a wide group of countries across three geographic windows: North Africa, the Sahel, the Lake Chad region and the Horn of Africa. Money from the EUTF for Africa is used to finance resilience-related activities (such as the implementation of Regional Development and Protection Programmes in countries hosting refugees), but also to improve the migration management capacity of third countries, including in the areas of border control, return and readmission (Carrera et al., 2018).

The Facility for Refugees in Turkey was established by means of a Commission Decision in November 2015. In contrast to EUTFs, the Facility is not a funding mechanism, but a coordination mechanism that mobilises resources made available under both the EU budget and additional contributions from Member States integrated into the EU budget. The Facility was endowed with an initial budget of €3 billion for the period 2016-2017. In March 2018, noting that the operational envelope of the first €3 billion tranche of the Facility had been fully contracted before the end of 2017, the Commission adopted a decision on the allocation of a second €3 billion tranche for the period 2018-2019.
EUTFs and the Facility for Refugees in Turkey have been the object of considerable attention by researchers and stakeholders. Specifically, EUTFs have been recognised as promising tools for complementing traditional models of EU external financing, enabling cooperation between a wide range of development actors. The EUTF for Africa, for example, has been recognised as capable of addressing the fragmentation of existing EU and Member states funding streams by providing a rapid and flexible response to emerging needs. Specifically, the value added of the EUTF for Africa has been recognised in the possibility to focus on the targeted use of development assistance to support communities affected by displacement and on strengthening national and sub-national service delivery systems (Castillejo, 2015; Oxfam, 2017). The same arguments can also be used to justify the establishment of the EU Facility for Refugees in Turkey: indeed, the Facility has been presented by the Commission as a coordination mechanism that ensures the optimal mobilisation of relevant existing EU financing instruments, including humanitarian and non-humanitarian assistance, enabling to address the needs of refugees and host communities in a comprehensive and coordinated manner (European Commission, 2018a).

Researchers and stakeholders, however, have also underlined the challenges associated with the adoption and implementation of “crisis instruments”, and specifically the trade-off between the priority of deploying rapid and flexible responses in emergency contexts, and the need to conform to established standards of transparency and democratic accountability (Den Hertog, 2016; Cortinovis & Conte, 2016). A first set of concerns involves the reduced level of democratic oversight allowed for by EUTFs: given that these instruments operate outside the EU budget, the EP plays only a negligible role in their establishment and has limited possibilities for oversight. More broadly, an approach based on the use of “extra-budget” instruments (such as is the case of EUTFs) and ‘extra-Treaty’ arrangements (e.g. the EU–Turkey Statement or the Valletta Declaration) to back cooperation with third countries has been associated with a trend towards increased bilateralism and intergovernmentalism in EU migration and asylum policy (Carrera et al., 2018, p. 74). This is particularly problematic in light of the legal and institutional order that the Lisbon Treaty was supposed to consolidate in those areas of EU action, in particular by providing for the role of the EP as “co-legislator” in the decision-making process.

In this regard, NGOs have denounced the fact that an approach that combines non-binding forms of cooperation with third countries with financial instruments that allow the circumvention of established accountability requirements in the use of funds may be used to promote a narrow security-driven agenda (Oxfam, 2017, p. 25). A joint statement of more than a hundred NGOs released in June 2016 expressed deep concerns about the
direction taken by EU external migration policy, and specifically about attempts to make deterrence and return the main objective of the EU’s relations with third countries (ACT Alliance EU et al., 2016). According to the statement, attempts to replicate the conditionality-based model of the EU-Turkey deal with other key countries of origin and transit of migrants risks cementing a shift towards a foreign policy that serves a single objective, to curb migration, at the expense of European credibility and leverage in defence of fundamental values and human rights.

In the case of the Refugee Facility for Turkey, observers have underlined how its very existence is closely linked at the policy level to the implementation of the EU-Turkey Statement of March 2016, as financial incentives provided through the Facility constituted one of the main conditions for the Turkish government to accept the commitments included in the EU-Turkey Statement. The ‘deal’ enables the removal to Turkey of asylum seekers arriving at the Greek islands after 20 March 2016 based on the premise that Turkey is a “safe country” for refugees. This assumption, however, has been contested by, among others, legal scholars, NGOs, the UNHCR and also the Parliamentary Assembly of the Council of Europe, in light of mounting proof of widespread rule of law and human rights violations in the country (Carrera and Guild, 2016; UNHCR, 2016; Council of Europe, 2016). In this regard, the limited number of Syrian refugees returned to Turkey in the framework of the EU-Turkey Statement is a clear demonstration of the legal obstacles that arise when applying the safe third country concept in that specific context (UNHCR, 2018b).

EU efforts to strengthen cooperation with Libya on migration and refugee issues have also been the object of criticism from several sides, including several NGOs and the European Parliament. Since 2015, a set of actions have been launched at the EU level, including in the framework of the EUTF for Africa, to support Libyan authorities on a set of migration related issues, such as Search and Rescue (SAR) operations, border surveillance and an enhanced fight against human smuggling and trafficking (CONCORD, 2018a). In the face of widespread evidence of human rights violations and abuse of refugees and migrants in Libya, including by Libyan national authorities, calls have multiplied on EU policymakers to abandon the current approach based on deterrence and focus instead on protecting human rights and promoting sustainable development in countries facing forced displacement situations (Amnesty International, 2017; Council of Europe, 2018; Danish Refugee Council, 2018; UNHCR, 2018c).
3. EU SUPPORT TO GLOBAL REFUGEE POLICY
IN THE NEXT MFF 2021-2027

The Commission’s structure for the new Multiannual Financial Framework (2021-2027) takes stock of the experience of emergency instruments established during the crisis years (such as the EUTF for Africa and the Facility for Refugees in Turkey) by providing the EU budget with increased flexibility and financial leverage to address complex migration challenges (European Commission, 2018c). The proposal foresees a major restructuring of the external dimension of the EU budget by bringing together 12 existing financial instruments into a broad Neighbourhood, Development and International Cooperation Instrument (NDICI) with a volume of €90 billion.

One of the major changes foreseen by the Commission’s proposal to simplify the EU’s external spending architecture is the integration of the European Development Fund – currently one of the key financial instruments to provide assistance to African, Caribbean and Pacific Countries – into the EU budget. As underlined by a previous analysis of the Commission’s proposal, the amount allocated to the NDICI represents an increase of 11% compared to the resources allocated to the financial instruments and funds that the new external funding instrument is expected to replace (Immenkamp, 2018).

The Commission’s proposal recognises stepping up cooperation on migration with partner countries as an essential objective of EU external action. In order to contribute to this priority, the proposal foresees that 10% of the total financial envelope of the new EU external action instrument should be dedicated to addressing the root causes of irregular migration and forced displacement and supporting migration management and governance, including the protection of refugees and migrants’ rights.

Another key aspect of the proposed Regulation is the attempt by the Commission to inject flexibility in the provision of EU external funding. In this regard, the Commission recognised that, as a consequence of the migration and refugee crisis during 2015-2016, problems were encountered in reallocating funds within the instruments under the EU budget as large portions of funds had been bonded to long-term programmes. In order to address the situation, the new proposal foresees the introduction of a €4 billion Rapid response component with worldwide coverage dedicated to quick response capacity in a number of areas, including strengthening resilience and linking humanitarian and development actions. The Rapid response component would be managed and implemented
through simplified procedures, thus allowing for more flexible and responsive actions. In addition, to further increase the ability of the EU to respond flexibly to unforeseen events, including unexpected migratory pressure, the Commission proposes to create an "emerging challenges and priorities cushion" worth €10 billion.

In March 2019, the Committees on Foreign Affairs and Development of the European Parliament adopted a joint Report on the Commission’s proposal establishing the NDICI (European Parliament 2019). The EP Report includes several amendments to the proposed Regulation. One of the main concerns of the EP Rapporteurs is to balance the need for more flexibility in the deployment of EU external funding with the respect for democratic legitimacy and transparency. To that aim, the EP Report requests the use of Delegated Acts for multiannual programmes to be developed under the new funding instrument, a procedure that would also allow for more political control by the co-legislators when resources under the “emerging challenges and flexibility cushion” are mobilised.

With negotiations among the co-legislations still ongoing, several stakeholders have released their position on the new Commission proposal for the next phase of EU external spending, expressing a set of concerns and recommendations. NGOs have reiterated warnings against the diversion of development aid towards achieving the EU’s external policy priorities in the area of migration control. In this regard, it has been stressed that the legally ambiguous agreements with third countries based on a logic of conditionality concluded in recent years, such as the EU-Turkey Statement or cooperation with Libyan authorities, do not represent sustainable solutions to be replicated in future EU initiatives (CONCORD, 2018b).

While flexibility and crisis responsive-programming should be considered as an integral part of the EU external action budget toolkit, pursuing those priorities should not lead to a reduction in oversight and transparency or be used to legitimise policies that are based on a narrowly understood migration management concept (Oxfam, 2018). A preliminary analysis of the Commission proposal released by ECRE stresses how the potential gain in predictability and accountability stemming from the integration of the European Development Fund into the EU budget could be offset by the large amount of unallocated money foreseen by the rapid response mechanism and the “flexibility cushion”. In this regard, the experience of EUTFs implemented during the crisis period has shown how faster and rapid procedures run the risk of reducing the quality of intervention and come at the expense of ownership by third countries governments, a key principle of EU development cooperation. Accordingly, ECRE stresses the need to clearly specify the criteria and procedures that would trigger the use of the unallocated reserve, taking into consideration in particular the level of need among refugees and host
communities and the potential of EU funding to improve the rights of displaced persons (ECRE, 2018).

On a broader level, references to the need to address the “root causes of irregular migration” included in the new EU external funding instrument seem to reflect a narrowly understood and conceptually flawed approach to the complex links between development processes and migration phenomena (ECRE, 2018). Against the subordination of EU external action to the imperative of containing migration movements towards Europe, available research points to the role of migration and mobility in enabling access to protection and, more broadly, in providing sustainable solutions for refugees and forced migrants (Long, 2015; Costello, 2019). In this regard, as stated in the Refugee Compact, the use of funding to support refugees and host communities and provide durable solutions should go hand in hand with the commitment by states to ensure access to protection for refugees, through resettlement and complementary pathways of admission.

Criticisms of the EU’s strategy of ‘externalising’ responsibility for asylum seekers to third countries does not imply denial that EU external funding has a crucial role to play in addressing forced displacement globally and assist the forcibly displaced and their hosts (UNHCR, 2018d). The new platform for cooperation offered by the GCR represents an opportunity for the EU and its member states to coordinate their actions in support of refugees, thus increasing the impact of EU resources. In this regard, civil society organisations have underlined the importance for the EU of preparing a collective commitment in view of the first Global Refugee Forum in 2019, including in the forms of additional financial assistance (ECRE, 2019). Besides that, the GCR stresses the importance of developing a multi-stakeholder and partnership approach, which requires the elaboration of collective, inclusive and concerted responses to forced displacement situations. Based on this approach, EU funding should be used to mobilise a plurality of actors, including independent civil society organisations, local communities and refugees themselves in the design, monitoring and implementation of actions in support of refugees.
4. CONCLUSIONS

As the world’s leading donor of humanitarian aid and development assistance, the EU and its Member States have a key role to play in addressing forced displacement situations and providing support and assistance to refugees worldwide. Specifically, and in line with the approach laid down in the GCR, the mobilisation of predictable and additional development funding is crucial for addressing the long-term development needs of refugees and their host communities and achieving durable solutions.

Negotiations of the next MFF 2021-2027 represent a vital opportunity for the EU to consolidate and scale up its engagement in global responsibility sharing for refugees and forced migrants. When assessing relevant policy options for the next phase of EU external funding, EU policymakers should take stock of the issues raised by ‘emergency instruments’ launched during the past four years, notably EUTFs and the Refugee Facility for Turkey.

Several analyses have underlined how the priority of increasing the speed and flexibility of EU funding that motivated the adoption of new funding mechanisms can put partner countries’ ownership, involvement of civil society actors, and accountability at stake. The limited possibility for the European Parliament to exercise its democratic scrutiny over the use of resources in the case of extra budget instruments (such as is the case of EUTFs) also has important consequences for the EU democratic rule of law as enshrined in the Lisbon Treaty. As stressed by many development NGOs, “breaking down policy silos” should not be to the detriment of established standards of democratic accountability.

Furthermore, civil society organisations have also firmly stressed how the mobilisation of EU resources in the framework of political ‘agreements’ with countries driven by an overarching containment approach (such as the EU Turkey Statement and the Valletta Declaration), are not aligned with a comprehensive rights-based framework of cooperation and are not conducive to sustainable solutions to complex refugee situations. In light of the previous, negotiations among EU actors on the next MFF, should centre on increasing the transparency and accountability of the EU funding landscape, ensuring at the same time coherence of EU external migration and refugee policy with the humanitarian and development principles enshrined in EU Treaties.
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Policy Option Brief

High levels of EU support for migrant integration implemented by civil society and local authorities: Options for the 2021 to 2027 MFF*

1. INTRODUCTION

This ReSOMA Policy Options Brief addresses two key issues driving current efforts at improving EU support for integration in the upcoming 2021 to 2027 programme cycle. Next to ensuring sufficient overall funding in line with the needs in Member States, a crucial challenge is to widen the participation in the relevant EU funds of integration actors which are locally active and provide support on community level. Local/regional authorities and civil society organisations alike strive for amendments of the legal base of the AMF and ESF+ funds proposed by the European Commission in 2018, by proposing a range of proposals informed by these overarching goals. This brief introduces the policy options, presents the corresponding proposals advanced by EU-level stakeholder organisations and traces the patterns of debate and support that the proposals garner, with a special focus on the European Parliament and reflecting the state of play of negotiations as of March 2019. Chapters on the evidence base of the stakeholder proposals highlight major findings that underpin the proposals and point out the type of evidence used.

Another key issue in the ongoing debate about the place of migrant integration in the next EU funding cycle, ensuring that EU support focuses not only on short-term measures in the arrival context, is addressed in the forthcoming ReSOMA Policy Options Brief on comprehensive, longer-term integration policies.

1.1 Policy option adequate funding – to ensure sufficient spending on integration according to needs across all Member States

Advancing this policy option is informed by lacking, or patchy, public spending on migrant and refugee integration seen in many Member States. Across Europe, the attention given to integration policies varies dramatically. Comparably high levels of financial support provided in wealthier and/or long-standing destination countries contrast with much lower levels in more recent destination countries or Member States where public finances have been under strain. In most countries, however, policy gaps related to specific and sectoral challenges exist, together

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with a lack of national spending in such areas. In this overall context, EU funds represent a key mechanism to instigate and leverage higher spending on migrant and refugee integration according to actual needs. In addition, they provide an opportunity to strengthen the principle of early integration ‘from day one’, in line with the EU policy approach.

Proposals put forward by stakeholder organisations start from the fact that traditionally EU funding dedicated to integration has been comparatively low (i.e. mostly under AMIF in the current programme period). In addition, there is a sense that existing spending levels need to be defended and reinforced in view of recent EU priorities focused on migration management and control. Proposals are also driven by growing reluctance in some Member States to create advantageous conditions for migrants and refugees in general, and the varying propensity of Member States to let migrants and refugees benefit from various EU programmes (structural funds, education programmes etc.). Pushing for adequate levels of EU integration funding is therefore not only about maintaining and expanding what is available from EU programmes, but also about making sure, through programme rules, that Member States eventually take up the potentially available means (cf. ReSOMA Discussion Briefs on ‘cities as providers of services’ and ‘maintaining mainstreaming’, chapters 4 on key issues and controversies).

1.2 Policy option broader participation – to ensure funds can be accessed by civil society and local/ regional authorities, and that these actors are fully involved in the funds’ governance

Advancing this policy option is informed by the ambition of local actors, both public and societal, to autonomously pursue integration priorities in line with the needs on the ground. The local level is where success or failure of integration processes is determined, with key public services such as housing and early childhood education, but also policies to combat poverty or social exclusion widely in the hand of municipalities. Civil society, local and regional authorities are uniquely placed to offer early integration support, pursue community building among newcomers and citizens, and shape the social climate in which reception and integration take place. However, local integration actors often do not have enough leeway to fully exploit their potential due to various constraints that often are related to lack of funding. EU programmes, their funds as much as their concepts and objectives, can be crucial to galvanize effective and lasting integration strategies on local level, pursued by public bodies and NGOs. Cities, regions and civil society thus are key stakeholders and potential beneficiaries of EU funding instruments for the integration of migrants and refugees.

Proposals put forward by stakeholder organisations respond to a reality that by far does not live up to the actual role of civil society and local/regional authorities in migrant integration. While NGOs are widely recognised as main beneficiaries of EU funding in the integration area, their participation in EU
programmes is often hampered by specific funding rules developed by Member States for programmes implemented on national level (under ‘shared management’). Other barriers to participation relate to EU rules, including on co-financing and administrative burdens that are problematic especially for smaller organisations. In what concerns municipalities, they have been grossly underrepresented as beneficiaries of recent EU integration funding in spite of their decisive role in handling the 2015/16 peak in arrivals. Moreover, they have experienced serious obstacles in accessing EU funds resulting from national implementation structures and -decisions. In the governance of the relevant programmes, the voice of local and regional authorities, civil society and social partners is underrepresented or even absent, leading to little involvement of these actors in programme planning, implementation and monitoring (cf. ReSoma Discussion Brief on ‘cities as providers of services’, chapter 4 on key issues and controversies).
2. PROPOSALS, THEIR DEBATE AND EVIDENCE BASE

2.1 Policy option adequate funding – proposals to ensure sufficient spending on integration according to needs across all Member States

The policy option aiming for sufficient levels of EU integration spending responds to the Commission proposals (EC 2018b,c) for the 2021 to 2027 Multiannual Financial Framework (MFF) with regard to:

- the Asylum and Migration Fund (AMF) with a focus on early integration to replace AMIF,
- the proposed ‘legal migration and integration’ heading of Member State AMF programmes under shared management,
- future integration support from the AMF Thematic Facility managed by the Commission, the European Social Fund (as ESF+) to become a foremost EU funding source for longer-term integration,
- the proposed ESF+ specific objective on integration of third-country nationals under the ESF’s social inclusion bracket, and
- the merging of today’s FEAD/support for the most deprived into ESF+.

(cf. ReSOMA Discussion Briefs on ‘cities as providers of services’ and ‘sustaining mainstreaming of immigrant integration’, chapters 3.2. on the post-2021 agenda and MFF proposals.)

2.1.1 Specific proposals put forward

Specific stakeholder proposals put forward as reaction to the Commission proposals and relevant for this policy option (details cf. 3.1) are:

- At least 30% of national AMF programmes under shared management to be allocated to, and actually spend, on integration and legal migration actions;
- Allocation of AMF funds to MS solely based on numbers of third-country nationals who arrived (and not on returns), to match the needs in the asylum and integration areas;
- 50% of the AMF to be managed by the European Commission under the Thematic Facility, to increase the Commission’s possibilities to address integration needs in Member States;
- The possibility to reabsorb AMF funds and spend them under the Thematic Facility in case a Member State underspends the funding allocated to its national programme;
- Explicit inclusion in the scope of AMF of the early identification of victims of violence and torture, and support to specialized civil society organisations through the Thematic Facility;
- Publication of the annual AMF performance reports as well as midterm evaluations, to increase the
transparency on how funds are used and facilitate monitoring;
- At least 30% of national ESF+ programmes under shared management to be spent on social inclusion and reducing poverty, including for integration of third-country nationals;
- Socio-economic integration of third-country nationals and of marginalised communities as two separate specific objectives of ESF+, to ensure equal attention to the two target groups;
- At least 4% of national ESF+ programmes to be spent on the two specific objectives addressing social inclusion of the most deprived and material deprivation;
- European Social Charter and Sustainable Development Goals as additional references for ESF+, to ensure its scope includes asylum seekers and persons with an irregular status.

2.1.2 Patterns of debate & support

Proposals on ensuring sufficient funding levels for integration are brought forward by basically all relevant EU-level stakeholder organisations, reflecting the concerns of their membership. On the level of Member States, the debate has different focal points depending on countries’ peculiar situations. Generally, the policy option has the highest salience in countries which lack systematic integration spending in line with needs, or where migration-related policies find scarce political support (e.g. various East-Central European Member States). Discussions among stakeholders take a somewhat different course in Member States with high levels of national integration spending and where integration objectives tend to be more mainstreamed across policy fields. In countries such as Germany, the Netherlands or Sweden, key concerns are rather how to effectively use the comparably small EU budgets for piloting and scaling up of innovative measures, or how to focus the means to address specific gaps and use the funds to leverage national spending in such deficiency areas.

Support in the European Parliament

In the European Parliament, as co-legislator of the future EU funds in the 2021 to 2027 MFF, a wide range of stakeholder positions have been taken up in the ongoing negotiations. The legislative resolution on the AMF regulation resulting from the plenary vote of 13 March 2019, based on the report of the Civil Liberties, Justice and Home Affairs (LIBE) Committee, addresses most of the above-mentioned concerns and will be the Parliament’s starting point in the upcoming negotiations with Council and Commission. Notably, it proposes to amend the integration objective of the fund, deleting the focus on early integration foreseen by the Commission, and stipulates to maintain the fund’s hitherto name, ‘Asylum, Migration and Integration Fund (AMIF)’ (EP 2018 e,f, 2019a). With a view to proposals put forward by stakeholders, Parliament has settled on:

- A minimum allocation of 10% of funds to integration and legal migration each in national AMF programmes (however not including a requirement on actual minimum spending); together with a
minimum allocation under the Thematic Facility of 10% each to integration and legal migration spending (details cf. 3.1.1);

- Deletion of provision that 40% of national AMF means are to be allocated to Member States according to criteria related countering irregular migration including returns, but still with the number of TCN who do not or no longer fulfil the conditions for entry and stay and who are subject to a final return decision to be taken into account as a criterion (details cf. 3.1.2);

- Strengthened provisions concerning vulnerable groups, through adding protection measures for vulnerable persons to the measures implemented through the fund; and adding to the scope of AMF support the early identification of vulnerable persons, victims of violence and torture as well as the provision of psycho-social and rehabilitation services (details cf. 3.1.5);

- Increased transparency on how funds are used and facilitated monitoring of state of programme implementation; through publication of actions, beneficiaries and annual performance reports; submission of reports to Parliament and Council; and detailed provisions on mid-term and retrospective evaluation reports (details cf. 3.1.6).

Concerning the ESF+ regulation, the amendments adopted by the European Parliament on 16 January 2019, based on the report of the Employment and Social Affairs Committee, embodies Parliament’s eventual stances on the proposals put forward by stakeholders (EP 2018c,d, 2019b):

- At least 27% of national ESF+ programmes under shared management to be spent on social inclusion and reducing poverty, including for integration of third-country nationals (details cf. 3.1.7);

- Socio-economic integration of third-country nationals to become a separate specific objective of ESF+ in the social inclusion policy area (details cf. 3.1.8);

- At least 3% of national ESF+ programmes to be spend on the two specific objectives addressing social inclusion of the most deprived and/or material deprivation (details cf. 3.1.9);

- Sustainable Development Goals as additional reference for ESF+, to ensure its scope includes asylum seekers and persons with an irregular status (details cf. 3.1.10)

2.1.3 Evidence base of proposals

Stakeholder proposals and demands are mostly buttressed by data and evidence about past implementation of EU funds in Member States. Partly, reports are gathered by stakeholder organisations, utilising expertise available among their membership. Partly, evidence comes from consultancy research, often related to Commissions-sponsored networks and platforms in the context of specific programmes. Stakeholders can also draw on reports of other EU bodies such as the
European Court of Auditors, or the Commission’s own assessment and evaluation reports.

Notably, most of this evidence is focused on the input side of programme implementation, i.e. the financial volume available for integration measures. Concentrating on input factors in this way is caused by an underlying notion of policy effectiveness which assumes that more spending will lead to improved outcomes, but also by the fact that this type of evidence simply is much easier to come by. Concerns about the output quality of policies and measures implemented through EU means may resonate in stakeholder proposals on improved monitoring and evaluation of the programmes, but long-term impact assessments of migrant integration policies are notoriously scarce in general, be they EU-funded or not (e.g. Bilgili 2015).

**Use of the AMIF for integration purposes**

Recent ECRE/UNHCR reports about the use of AMIF on national level (ECRE/UNHCR 2017, 2019) provide crucial evidence, pointing out the relevance of many stakeholder proposals for the ongoing AMF negotiations. Drawing on member organisation and local staff expertise as well as analysing national AMIF interim evaluation reports, the reports highlight the limited impact of the AMIF programmes under shared management in countries with no national integration strategy or defined policy approach; naming Cyprus, Bulgaria, Hungary and Slovakia as examples. At the same time, Hungary and Slovakia exemplify Member States where AMIF is the only remaining integration funding source. Eight Member States note in their interim reports that integration measures would be unlikely without AMIF due to lack of other funding sources. That countries can get away with not fully addressing integration needs under existing programme rules is evidenced by the United Kingdom (only measures for resettled persons), Czechia (lack of awareness measures), Austria and Hungary (vulnerable groups not addressed). Czechia and Austria are moreover quoted as countries where political priorities have influenced the content of AMIF calls. In seven Member States, including large countries such as Germany and Spain but also Greece and Hungary, AMIF is found to substitute state financing under responsibilities stemming from the Common European Asylum System instead of complementing it (ECRE/UNHCR 2017: 27-31, 2019: 41).

Concerning the allocation of national AMIF funds to the integration priority, the same report finds that across European sub-regions more than 30% of means are allocated on integration actions, but with notable exceptions for Greece/Italy/Malta and UK/Ireland. Only in four countries respondents found the distribution of AMIF basic allocations across the priorities (i.e. asylum, integration, return) as in line with the predominant needs. The findings also suggest that minimum allocation to priorities as required under the 2014-20 AMIF does not necessarily produce spending in the same proportions. Drawing on data from the national AMIF interim evaluation reports, the second publication of the ECRE/UNHCR research into AMIF spending points out the wide variation in AMIF expenditure financing integration actions in Member States from 2014 to mid-2017. While in Czechia and Sweden more than 75% of AMIF expenditure...
went to the integration objective, in Hungary, Poland and Romania the share of expenditure on integration ranged between 50 and 75%. Between 25 and 50% of AMIF expenditure was dedicated to integration in Austria, Cyprus, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Slovakia, Slovenia and Spain. All other Member States spent less than a quarter of AMIF expenditure on integration in the first half of the current programme period, with Greece, Malta and the UK even nothing or on miniscule scale. EU-wide, 26.4% of national AMIF expenditure went to the integration objective. These data, though, need to be seen against the background of low overall AMIF expenditure rates in this period, with the Czech, Greek, Maltese and Swedish programmes spent to less than 5% until mid 2017 (ECRE/UNHCR 2019: 17f). Based on this evidence, EU legislators are advised to maintain in the 2021-27 AMF the minimum allocation rule concerning the integration priority and moreover turn it into an actual spending requirement (ECRE/UNHCR 2017: 23).

With regard to the overall allocation key of future AMF funds to Member States, another recent joint ECRE/UNHCR report points out how the proposed indicator (number of returns) in practice would lead to financially rewarding Member States with a below-average recognition rate and correspondingly high return numbers (ECRE/UNHCR 2018b: 50). The calculation (based on 2015-17 figures) shows such an incentive structure for seven countries, providing the evidence to propose that return figures should be taken out of the allocation formula as they would only distort allocation of funds according to Member States’ needs in the asylum and integration areas.

**Lack of transparency in AMIF implementation**

That weak provisions of the AMIF legal base lead to a lack of transparency of national spending practice is evidenced by both stakeholder research and insights of the European Court of Auditors. To what extent AMIF spending corresponds to the priorities of the national programmes is not known due to insufficient programme-level information rules and widespread Member State communication malpractice. Overall, there is a lack of consistent public information on calls for projects, beneficiaries, projects and financing. ECRE/UNHCR has found that as of end 2017, only eight countries have hold information and training events open to participation by civil society actors, while another group of eight Member States has not even published any kind of guidance for project implementation. How AMIF funding is being used is not being published at all by eight countries, and only partly by 16 Member States. Information on the impact of AMIF actions is practically absent, also because the annual Commission implementation reports are not published (ECRE/UNHCR 2018b: 24-26).

Sluggish implementation, in spite of the needs and challenges associated with the 2015/16 peak in arrivals, is a peculiar problem of AMIF, with an average of only 16% expenditure committed across Member States by the end of 2017 and two countries not spending at all. The Commission’s ad hoc requests of action plans to speed up implementation in Member States judged to be behind schedule (as done for Bulgaria, Croatia, Greece, Italy and Poland)
are seemingly not enough to address the underlying problem (ECA 2018: 26, ECRE/UNHCR 2017: 27-31).

**Use of the ESF for integration purposes**

Under the ESF, supposed to become the major EU funding source for longer-term integration, dedicated integration spending has been difficult to track either. Until now, the lack of unambiguous output indicators has made it difficult to pinpoint the number of migrant/foreign-background beneficiaries disentangled from other minorities and marginalised minorities (e.g. ECA 2018: 26); suggesting a more differentiated output/result indicator system for the upcoming 2012 to 2027 MFF. While 23 Member States have used the ESF to implement measures for the integration of migrants, only six governments report to a European Court of Auditors survey that the numbers of migrants supported by EU funds are fully known (ECA 2018: Annex III). Only where Member States have foreseen refugee- or migrant-specific sub-programmes in their national ESF programmes and report about implementation (e.g. Belgium, Germany, Italy, Portugal, Spain, cf. EAPN 2016), a clearer picture about use of ESF means for migrant integration exists.

Member State spending under the overall ESF bracket for social inclusion and poverty reduction is a key reference data insofar, as it has encompassed much of the support benefitting migrants. In future as well, the ESF+ specific objective on the socio-economic integration of third-country nationals will be situated in the social inclusion policy area of the fund’s objectives. An analysis of the 2014-2020 ESF partnership agreements and operational programmes undertaken for the Commission has shown that 25.6% of the total ESF budget was allocated to the promotion of social inclusion, combating poverty and any discrimination (Thematic Objective 9). 20 Member States have allocated between 20% and 30% of their ESF budgets to TO9, with only Finland and Lithuania sticking to the minimum requirement of 20% foreseen in the 2014 to 2020 MFF. Austria, Belgium, France, Germany, Ireland, Latvia, the Netherlands and Malta allocated more than 30% of their ESF budget to social inclusion (Fondazione Brodolini, CEPS and COWI 2016, ESF Transnational Platform/AEIDL 2018a:6). This evidence of actual Member States preferences strongly suggests, for the upcoming funding cycle, a minimum allocation to the social inclusion and poverty reduction objectives above the current 20%; and has informed the stakeholder proposals on a minimum allocation of at least 30% of national programmes to the social inclusion policy area.

**2.2 Policy option broader participation**

— proposals to ensure funds can be accessed by civil society and local/regional authorities, and that these actors are fully involved in the funds’ governance

The policy option aiming for broader involvement of the local/regional levels and civil society in the funds responds to the Commission proposals (EC 2018a,b,c) for the 2021 to 2027 MFF with regard to:

- support from the AMF Thematic Facility for integration actions implemented by LRA and CSO;
increased EU co-financing of 90% for actions implemented by LRA and CSO under the fund’s integration objective;

- AMF allocation rules to the asylum, integration and return objectives in Member States programmes;

- under the ESF+ European co-financing rates of 40 to 70% (reduced compared to the current MFF);

- the Partnership Principle in the Common Provisions Regulation (CPR) extending to AMF, ESF+ and ERDF;

- provisions in the AMF and ESF+ regulations on programming, monitoring, reporting and evaluation;

- CPR provisions on common programme rules as well as on combined, cumulative and complementary funding from different funds.

(cf. ReSOMA Discussion Briefs on ‘cities as providers of services’ and ‘sustaining mainstreaming of immigrant integration’, chapters 3.2. on the post-2021 agenda and MFF proposals.)

2.2.1 Specific proposals put forward

Specific proposals put forward by integration stakeholder organisations as reaction to the Commission proposals or in the course of the ongoing legislative process, and relevant for this policy option, are (details cf. 3.2):

- A new EU funding instrument offering direct financial support to cities in return for receiving refugees and asylum seekers, linked to resettlement and/or EU relocation programmes;

- Reasonable minimum allocations for local authorities and civil society organisations across all priorities within national AMF programmes under shared management;

- A maximum EU co-financing rate of 80% for national AMF programmes and encouragement of matching national funds; additionally, the extension of the proposed 90% co-financing rate for integration actions led by civil society and local/regional authorities across all AMF objectives;

- Earmarking for local authorities and civil society of a significant part of funding from the AMF Thematic Facility, to support integration and reception actions implemented locally;

- A strong and mandatory Partnership Principle in all relevant funds, to ensure meaningful multi-stakeholder and multi-level programming, implementation, monitoring and evaluation;

- An EU-level Partnership Principle, applied to the AMF Thematic Facility and with regular stakeholder consultations on the planning and implementation of activities;

- Inclusion of civil society stakeholders in the ESF+ Committee, to reflect their key role in the design and delivery of the fund, in line with the idea of an EU-level Partnership Principle.
2.2.2 Patterns of debate & support

Striving for more involvement in EU funds programming and implementation is a strong focus for all EU-level organisations representing civil society and sub-national levels of government. Again, on Member State level the debate is more nuanced. On the one hand, the pattern already observed regarding the debate on sufficient overall integration funding also holds true in this context: In countries where integration policies are generally less developed and which lack support structures for the inclusion of migrants and refugees, better and direct access for local/regional authorities and NGOs is a key issue. Municipalities and civil society in countries with higher levels of integration spending rather discuss the added value of EU funding for leveraging innovation and filling specific gaps. A common concern, though, across countries is the accessibility of the funds for small entities which lack the capacities and resources required for successful participation in EU programmes, be it smaller cities or civic platforms and small-scale NGOs.

On the other hand, arguments around the partnership principle and the funds’ governance are highly diverging, both across Member States and within countries. This discussion reflects different administrative cultures and variations in the general civil society-state relationship as much as diverging consultation practices in various policy fields, as the EU instruments are being implemented through different ministries and management structures. Reinforced transnational, cross-country cooperation and exchange among civil society and local/regional authorities concerning their involvement in programme planning, implementation and evaluation seems in order, given this multitude of issues with partnership-based programme implementation in Member States.

Support in the European Parliament

In the ongoing legislative process most of the stakeholder positions have been taken up by Members of the LIBE Committee. The EP’s legislative resolution on the AMF regulation of March 2019 stipulates (EP 2018e,f, 2019a):

- Establishment and development of regional/local integration strategies as well as capacity building of integration services provided by local/regional authorities and NGOs is added to the fund’s scope of support; however, no provisions on minimum allocations of national AMF programmes to civil society organisations and local/regional authorities (details cf. 3.2.2)
- Encouragement of Member States to provide matching national co-financing to EU-funding of at a maximum 75% of eligible expenditure (details cf. 3.2.3)
- A minimum allocation of between 5% of the AMF Thematic Facility to local and regional authorities implementing integration actions (details cf. 3.2.4)
- Enshrining of a strong partnership principle in the regulation in addition to the provisions of the Common Provisions Regulation, with partnerships to include local and regional authorities as well as NGOs, human rights institutions and equality bodies (details cf. 3.2.5)
• The Commission to regularly engage with civil society organisations in the development and implementation of work programmes of the Thematic Facility; and to consult concerning actions eligible for higher co-financing and the further development the monitoring and evaluation framework (details cf. 3.2.6)

With regard to the **ESF+ regulation**, the amendments adopted by the European Parliament also reflect key proposals put forward by stakeholders (EP 2018c,d, 2019b):

• Enshrining of a far-reaching partnership principle in the ESF+ regulation, asking for meaningful participation of social partners, civil society organisations, equality bodies, national human rights institutions and other relevant or representative organisations (details cf. 3.3.5)

• Appointment to the ESF+ Committee of Member State representatives of civil society, equality bodies or other independent human right institutions, as well as of a Union level civil society representative (details cf. 3.3.7)

### 2.2.3 Evidence base of proposals

A wide range of stakeholder literature exists assessing to what extent civil society and local/regional actors actually benefit from the EU programmes in the integration and migration field. To a large extent, these reports are based on survey work among member organisations and other actors involved in partnership consultations, complemented by analysis of programme documents. It is noteworthy that hard evidence on spending committed to local bodies and civil society organisations only is available through programme monitoring and evaluation reports put together by the Commission or Member States for the Commission, to the extent that they are being made public.

**Limited civil society and local authority participation in current funding cycle**

Concerning the role of civil society in implementing AMIF and as beneficiary of the fund, important insights are provided by the recent ‘Follow the Money’ reports (ECRE/UNHCR 2017, 2019). A key finding relates to significant variation across Europe. While in a number of Member States NGOs are even the main implementing agencies for AMIF funds, in some countries civil society receives only a small share of available means. Across all AMIF objectives (i.e. asylum, integration and return), national AMIF interim evaluation reports provide evidence that from 2014 to mid-2017 Austria, Belgium, France, Ireland, the Netherlands, Poland, Portugal, Romania and Spain committed 50% or more of AMIF funds to civil society organisations, with highest shares in France (84%) and Spain (91%). Cyprus, Estonia, Finland, Italy, Latvia, Malta, and Slovenia allocated less than 25% to civil society; while in Greece and the UK AMIF implementation has been entirely state-led (ECRE/UNHCR 2019: 20f).

Generally, NGO participation in implementing AMIF is found by ECRE/UNHCR research to be the more extensive, the stronger civil society sectors are, the more established structures of state-civil society collaboration exist, and the more NGOs do have pre-existing roles in
national integration frameworks. Barriers to NGO involvement resulting from national approaches to managing the funds include lack of support in pre-application phase, non-transparent call procedures, cumbersome eligibility rules, lack of pre-financing and delays in project approval and payments. Where governments do not provide co-financing for national programme actions (e.g. Hungary and Romania), project carriers can be hard pressed to source additional funding (ECRE/UNHCR 2017: 40-43).

Reflecting on key challenges in view of the upcoming MFF, civil society funding experts from across Europe have stressed the reluctance of many governments to systematically involve organised civil society in the development and implementation of the national programmes. Points of concern include only selective engagement in the programming phase, missed opportunities for stakeholder mobilisation, a propensity of governments to speak to large non-profit actors rather than to small and specialised NGOs, barriers to participation for small entities resulting from payment rules and schedules, lack of transparency in decision-making, and even a tendency in a few countries to use national AMIF implementation rules to harness critical civil society.

In what concerns AMIF uptake on the local level, the situation is even more pronounced than for civil society organisations. As evidenced by the Commission’s mid-term review, only 10% of all national programme funds committed 2014 to 2017 have been spent by local public bodies under the AMIF integration priority, referring both to municipalities and local branches of national agencies (EC 2018d, ECRE 2018b, ECRE/UNHCR 2019). But only in 15 national programmes this category of implementing organisations features at all, with more than 20% of committed funds implemented via local public authorities only in Cyprus, Finland, Italy, Malta, Portugal and Sweden. With 48% their share is highest in Italy where integration measures are implemented through regional plans involving local authorities (ECRE/UNHCR 2019 drawing on national AMIF interim evaluation reports: 20f).

In the case of the ESF on the other hand, the current programme period has seen improvements insofar as Member States were encouraged to use the EU Structural Funds for so-called ‘integrated actions for sustainable urban development’, leading to an estimated third of the new urban strategies to include ESF funding. This and the requirement to use part of the national ERDF allocation for these integrated actions led to more frequent direct responsibility of cities in the management of ESF funds. Notwithstanding these developments, cities continue to point out that Operational Programmes and calls leave key local challenges not addressed, that target groups and indicators do not match the local reality, or that coordination gaps exist at the ESF/ERDF nexus (EUROCITIES 2018a, HLG 2017, Urban Agenda 2018, Social Platform 2018a).

* ReSOMA Transnational Feedback Meeting ‘Towards coordinated, complementary and comprehensive integration policies funded from EU programmes’, March 2019. Participants represented experiences in Belgium, Czechia, Estonia, France, the Netherlands, Poland and Spain.
Evidence on cities’ role in the integration of migrants and refugees

In any case, proposing broader involvement of local authorities in the funds is based on the assumption that cities have a key role, or are even better placed than national governments, to deal with the reception, early integration and long-term inclusion of migrants. In addition, cities and their organisations can point out that increased efforts at urban-level integration strategies take place in the context of a revival of local social inclusion and welfare policies, with innovation, experimentation and piloting of solutions that are difficult to achieve at higher levels of government (Jeffrey 2018). Ample evidence exists on the willingness of many cities, in particular during the 2015/16 arrivals, to take an open, welcoming stance and innovate local-level integration policies. Based on research among member cities, EUROCITIES has documented such efforts in a series of publications on reception, education and labour market integration (EUROCITIES 2016, 2017a, 2017d). City networks like ‘Solidarity Cities’ and ‘Arrival Cities’ are built around such ‘champions’ and ‘coalitions of the willing’, with ongoing academic research exploring this development (Bendel et al. forthcoming).

All of this evidence is used to argue that the proposals on better access for cities to integration funding would be effective, in the sense of sufficient uptake and absorption of EU instruments among cities. Other research has provided a more nuanced picture, pointing out that among European cities there are also those more reluctant to receive migrants or are even openly rejecting it (e.g. Ambrosini 2013), or that local-level integration polices may be closely tied to national reception policies with little leeway for autonomous action (e.g. Emilsson 2015). Findings like these indicate an uptake of means that possibly would be lower than expected by advocates of more EU integration spending being channelled to the local level.

Multi-stakeholder governance: evidence on partnership implementation in Structural Funds in general

With regard to the partnership principle, i.e. the participation of local and regional authorities as well as civil society organisations in programme planning, implementation and monitoring, a number of assessments is available. Following the adoption of the European Code of Conduct on Partnership (ECCP), a CEMR report has gathered evidence on its implementation in Member States throughout the Structural Funds (including ESF) in the planning of the current programme period, based on a membership survey. It found that out of 18 countries assessed only four had fully involved local and regional authorities in the process in all stages, and another ten Member States at least partially applied the standards set forth in the ECCP. Huge differences in practices persisted not only across countries, but also from one fund to the other, and from partnership agreements to operational programmes (CEMR 2015).

These findings are confirmed by a report for the Commission on the implementation of the partnership principle in Structural Funds programmes including ERDF and multi-fund programmes co-financed by ESF, based on stakeholder perceptions and document analysis. It concluded that while the reinforced legal framework clearly contributed to significant improvements, the partnership
principle is still implemented very differently, with the level and type of partner involvement often depending on national administrative structures, the existence of different historical legacies and the technical capacity of the partners. As a general picture across Member States, public authorities, especially from the national and regional levels, are overrepresented at the expense of the general public, civil society and the social and economic partners (Sweco, Spatial Foresight and Nordregio 2016, also cf. CPMR 2018b, EPRS 2017).

Evidence on implementation of the Partnership Principle in the ESF

Focused on the European Social Fund and its social inclusion and poverty reduction objective, a report of the European Anti-Poverty Network (EAPN) based on a membership survey likewise found a generally low level of engagement of NGOs and low satisfaction with the quality of the engagement. Only nine out of the 16 EAPN member networks participating in the survey were involved in the drafting of the ESF Partnership Agreement and the Operational Programmes (Czechia, Finland, Germany, Ireland, Italy, Poland, Portugal, Romania, Spain), while seven were not consulted. Only Germany, Italy, Poland and Romania confirmed a positive involvement that resulted in an impact on the Partnership Agreement and/or the Operational Programme. The quality of the social sector’s participation in ESF Monitoring Committees is widely questioned, with only Germany, Romania and Spain reporting high levels of participation. Reasons highlighted for non-involvement were lack of access to political decision-making and insufficiently participative mechanisms (EAPN 2016: 8).

Most recently, a review of the European Code of Conduct on Partnership conducted by the ESF Transnational Platform identified the key problems leading to limited opportunities for genuine stakeholder involvement in the design, implementation, monitoring and evaluation of programmes. Notably, these finding resulted from comprehensive survey work with ESF management authorities, Programme Monitoring Committees, NGO stakeholders and social partners in all Member States. Recommendations for strengthened partnership provisions derived from these challenges include: More clarity on what representativeness means, with encouragement of greater diversity in partner selection and clear procedures for including partners; more transparency in decision-making processes with clearer guidance around timeframes, expectations and opportunities for partner input; ongoing involvement in all phases of programme development and implementation, going beyond consultation and integrating the local voice through bottom-up and participative approaches; more assistance and training to strengthen the institutional capacities and partnership skills needed to contribute effectively to programmes and projects; and more proactive and appropriate involvement in review and assessment processes (ESF Transnational Platform/AEIDL 2018b: 32-35).

Evidence on implementation of the Partnership Principle in the AMIF

Concerning the AMIF, where the partnership principle is anchored in a less committing way than in the Structural Funds, systematic
assessment is provided by ECRE/UNHCR research. Member States experience reflects the soft wording of the partnership provision in the AMIF regulation, only asking to include regional and local authorities ‘where applicable’ and NGOs and social partners ‘where deemed appropriate’. In practice, the partnership principle is not applied in a consistent way, and in many cases it is not obvious how and if at all consultations impacted on the priorities chosen for the national programmes. Only seven Member States could be identified that consulted in the preparation phase with a range of stakeholders, while other countries witnessed pro-forma consultations after determination of priorities (France) or outright rejection of civil society consultation requests (Germany). Not a single national programme document refers to needs analyses or data provided by non-governmental actors; and nowhere is the Partnership Principle being interpreted as meaning that different types of actors have equitable or minimum access to funding.

Likewise, with regard to civil society and local/regional authority participation in Monitoring Committees which oversee programme implementation, the Partnership Principle is interpreted in very different, often restrictive ways. Practices found include just observer status for civil society organisations (Hungary), participation of only the government office for cooperation with NGOs (Croatia), mere lip-service to the principle (Romania) and delayed inclusion of NGOs (Great Britain, Greece). Last not least, the report notes that the evaluation framework does not ask Member States to seek the input of partners, and that the AMIF regulation does not foresee implementation of the Partnership Principle at European level (ECRE/UNHCR 2018a: 36-40)

Evidence on higher efficiency and impact of policies based on consultation and participation

A common trait of all reports mentioned is that they mostly focus on assessing the implementation practice of the partnership principle, highlighting either good practices or deficiencies in Member States. This literature, however, scarcely refers to evidence on the outcome of policies that have been pursued in partnership, i.e. the reasons why governments should embark on a multi-stakeholder governance framework when developing and implementing policies in the first place. For example, the review of the European Code of Conduct on Partnership done by the ESF Transnational Network highlights and confirms the rationale for partnership as proposed by e.g. a 2014 Committee of the Regions report for the Commission (Van den Brande 2014). Thus, effective delivery of structural funds programmes is catalysed by the partnership principle, leading to: Focus and improved coordination, as policy needs as well as perspectives of end-users and target groups are more clearly identified when including different societal actors; better access to resources and innovative solutions, as more creative and dynamic approaches become available from diverse contributions; institutional strengthening, capacity building and sustainability, as disadvantaged or marginalised actors gain a stronger voice in the political arena, overcome resource limitations and assume a more proactive role; and higher legitimacy, stability and sustainability, as a more democratic ‘mandate’ gained through broader participation of
different organisations, groups and citizens results in durable change (ESF Transnational Platform/AEIDL 2018b: 5-7).

The stakeholder survey conducted for the Commission’s assessment of the partnership principle’s implementation confirms these propositions. The report found that added value in terms of better thematic balance and focus of structural funds programmes, stemming from more expertise and know-how consideration, is exemplified through countries such as Bulgaria, Cyprus, Estonia, Ireland, Latvia, Malta, Poland and Slovenia. Higher commitment and more ownership, leading to facilitated policy implementation, could be observed in Bulgaria, Cyprus, Estonia, Finland, Germany, Ireland, the Netherlands, Malta, Poland, Slovenia, Spain and Sweden (Sweco, Spatial Foresight and Nordregio 2016: 38-49).

Academic literature likewise provides only limited insight into the actual efficiency and impact of policies that are developed and implemented according to the partnership principle, at least in the area of migrant integration.1 Research is rather focused on whether countries implement – and comply with – the partnership provisions stipulated as soft EU law; and whether the EU programme framework in general has had an effect on how Member States adapt, define and devise integration policies. Research of this kind is also interested in the extent to which a common understanding of migrant integration is fostered through concepts and coordination mechanisms associated with the EU framework, and if factors like public opinion or the strength of organised civil society exert significant influence on how EU instruments are implemented (e.g. Carrera and Atger 2011, Caviedes 2004, Geddes 2000, Sebastiani 2015, Van Wolleghem 2017, 2019).

EU policymakers may take note from such research that the overall capacities of civil society organisations appear to be more relevant for achieving government behaviour in line with EU objectives than financial incentives (notwithstanding that the inclination of governments to support multiculturalism has the strongest effect on implementation aligned to EU parameters). Empowering civil society actors that are in a good position to keep government in check, including providing them with a role in partnership-led programme implementation, thus offers a more efficient way to leverage EU policy goals based on soft law than budgetary means (Van Wolleghem 2017).

In spite of research results like this, a research gap nevertheless seems to prevail on the efficiency and impact of partnership-led EU programme implementation, in the sense of assessing the quality of policies and integration outcomes linked to the way local level or civil society stakeholders are involved in programme development and delivery. Such evidence, however, would be particularly helpful for anybody arguing for changes or modifications in how the partnership principle is implemented in Member States.

1 Zeynep Kasli, ReSOMA’s lead expert on integration, contributed to this chapter with insights into the state-of-art of current research.
## Annex
### Overview of policy options

#### 3.1 Adequate funding

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<td><strong>What is proposed</strong></td>
<td>To introduce in the AMF national programmes under shared management <strong>minimum allocation and spending requirements for the integration and legal migration</strong> actions, to ensure that Member States adequately invest in these areas and are obliged to use the funds for these purposes. The ringfencing should amount to <strong>at least 30%</strong> of AMF funds allocated to, and spent by, a Member State (ECRE, CEMR). <strong>Flexible spending under the Thematic Facility</strong>, however, should not be bound by allocation requirements, but be closely overseen by the European Parliament (ECRE)</td>
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<tr>
<td><strong>Who is proposing it</strong></td>
<td>among stakeholder organisations: ECRE, CEMR, EUROCITIES</td>
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<tr>
<td><strong>Where does the proposal find support?</strong></td>
<td>in the European Parliament: AMF legislative resolution/amendments adopted:</td>
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<td>• Member States to allocate a minimum of 10% of their allocated funding to the integration-specific objectives (and a further minimum 10% to legal migration; (Amendment 93 on Art. 13.1)</td>
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<td>• Member States to ensure that their programmes include actions addressing all the specific objectives (incl. those related to integration) and that the allocation of resources among the objectives ensures that those objectives can be met (Amendment 104 on Art. 13.1a new)</td>
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<td>• a minimum of 10% of the funding from the Thematic Facility to be allocated to the integration-specific objectives (Amendment 103 on Art. 9.2)</td>
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<td><strong>What is proposed</strong></td>
<td>To base <strong>allocation of AMF funds to Member States only on numbers of third-country nationals who arrived</strong>, and not also on numbers of persons obliged to return/being returned. Available funding should match the needs in the asylum and integration areas and not incentivise low recognition rates. Furthermore, allocation indicators should include beneficiaries of humanitarian protection/protection status under national legislation (next to recognised refugees and persons under subsidiary protection).</td>
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<td><strong>Who is proposing it</strong></td>
<td>among stakeholder organisations: ECRE</td>
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<td><strong>Where does the proposal find support?</strong></td>
<td>AMF legislative resolution/amendments adopted:</td>
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<td></td>
<td>• Deletion of provision that 40% of national AMF means are to be allocated to Member States according to criteria related counting</td>
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irregular migration including returns; only the number of third country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a final return decision to be taken into account as a criterion (Amendments 167 and 168 on Annex I.4.a and I.4.b)

### 4.1.1.3 3.1.3
**What is proposed** To **increase the percentage of the AMF** fund that is managed by the European Commission under the Thematic Facility from 40 to 50%.

**Who is proposing it** among stakeholder organisations: ECRE

**Where does the proposal find support?** AMF legislative resolution/amendments adopted: ---

### 4.1.1.4 3.1.4
**What is proposed** It should be possible for the European Commission to **reabsorb funds where Member States deliberately chose not to spend** EU resources and spend them under the Thematic Facility. Where the mid-term review finds consistent underspending or an unwillingness of a Member State to disburse the funding allocated to its national programme, the European Commission should suspend further dispersal of funds and ask for a reabsorption of the funds already dispersed to the Member State.

**Who is proposing it** among stakeholder organisations: ECRE

**Where does the proposal find support?** AMF legislative resolution/amendments adopted: ---

### 4.1.1.5 3.1.5
**What is proposed** To explicitly extend the general scope of **support from AMF to include the early identification of victims of violence and torture** and other vulnerable groups and the **delivery of qualified psycho-social and rehabilitation services to the victims of violence and torture**. The Thematic Facility should also expressly provide adequate support to specialized civil society organisations for delivering qualified psycho-social and rehabilitation services.

**Who is proposing it** among stakeholder organisations: ECRE

**Where does the proposal find support?** in the European Parliament:
- AMF legislative resolution/amendments adopted:
  - to add to the AMF scope of support the identification of applicants with special procedural or reception needs, including the early identification of victims of trafficking, minors and other vulnerable
persons such as victims of torture and gender-based violence, and referral to specialised services (Amendment 196 on Annex III.2.c)

- to add to the AMF scope of support the provision of qualified psycho-social and rehabilitation services to victims of violence and torture, including gender-based violence (Amendment 197 on Annex III.2.ca new)
- to add the number of vulnerable persons assisted through the programme, including children and those granted international protection, to the information set out in Annual Performance Reports (Amendment 161 on Art. 30.2.ha new)

4.1.1.6 3.1.6
What is proposed
To increase the transparency on how AMF funds are used and facilitate monitoring through publication of the annual performance reports as well as mid-term evaluations by the Member States and the European Commission.

Who is proposing it
among stakeholder organisations: ECRE

Where does the proposal find support?
in the European Parliament:
AMF legislative resolution/amendments adopted:
- the Commission to at least annually provide the European Parliament and the Council with information on programme performance in line with the AMF core performance indicators (Amendment 148 on Art. 28.1 referring to Annex V);
- the Commission to make available upon request to the European Parliament and to the Council the progress towards achievement of the programme objectives in line with the AMF output indicators (Amendment 149 on Art. 28.3 referring to Annex VIII)
- the Commission until end 2024 to present a mid-term evaluation examining the effectiveness, efficiency, simplification and flexibility of the Fund, taking into account all relevant information available, in particular the annual performance reports submitted by the Member States and the output and result indicators; and until 2030 to carry out a retrospective evaluation and to submit an evaluation report to the European Parliament and to the Council. All evaluations are to be conducted with meaningful participation of social partners, civil society organisations, including migrants and refugees’ organisations, equality bodies, national human rights institutions and other relevant organisations in accordance with the partnership principle (Amendment 151 on Art. 29.a new)
- to publish the annual performance reports of Member States on a dedicated website and to forward them to the European Parliament and the Council; and the Commission to make summaries of annual performance reports available to the European Parliament and to the Council, and to publish them on a dedicated website (Amendments 152 and 162 on Art. 30.1 and 30.3)

4.1.1.7 3.1.7
What is proposed
To increase from 25% to 30% the minimum share of ESF+ funds spent on social inclusion and reducing poverty in Member States
programmes under shared management (and to exclude support addressing material deprivation from this share, to be covered by another minimum spending requirement, Social Platform). As the socio-economic integration of third-country nationals falls under this sub-heading of proposed ESF+ objectives, increasing the share would create more possibilities for targeted support of integration measures that go beyond labour-market integration.

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<td>Social Platform, EU Alliance for Investing in Children</td>
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<th>Where does the proposal find support?</th>
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<td></td>
<td>ESF+ legislative resolution/amendments adopted:</td>
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<td>• Member States to allocate at least 27% of their ESF+ resources under shared management of their ESF+ resources under shared management to the specific objectives for the social inclusion policy (Amendment 92 on Art 7.3)</td>
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4.1.1.8 3.1.8

What is proposed

To split the ‘socio-economic integration of third-country nationals and of marginalised communities such as the Roma’ into two separate specific objectives, on equal footing, of the future ESF+. Both groups should receive adequate attention in national ESF+ programmes under shared management and supporting one of them should not happen to the detriment of the other.

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<td>ESF+ legislative resolution/amendments adopted:</td>
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<td>• to promote long-term socio-economic integration of third country nationals, including migrants, as a separate specific objective (Amendment 89 on Art 4.1.viii/viia)</td>
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4.1.1.9 3.1.9

What is proposed

To require Member States to spend a minimum share of 4% of their ESF+ funds under shared management on the two specific objectives addressing social inclusion of the most deprived and material deprivation (instead of the proposed minimum spending requirement of 2% for the objective addressing material deprivation only). This would ensure that, post-FEAD, spending for social inclusion of the most deprived remains on an appropriate level, in line with the national strategic framework of poverty reduction and social inclusion as proposed as an ESF+ enabling condition.

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<td>ESF+ legislative resolution/amendments adopted:</td>
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Member States to allocate at least 3% of their ESF+ resources under shared management to the specific objective of addressing social inclusion of the most deprived and/or material deprivation; in addition to the minimum allocation of at least 27% of the ESF+ resources to the specific objectives vii to x of Article 4.1 (Amendment 92 on Art 7.4)

4.1.1.10

4.1.1.11 3.1.10

What is proposed

Application of the ESF+ should be also guided by the European Social Charter and the Sustainable Development Goals (and not only the European Pillar of Social Rights), to ensure in the ESF+ target groups inclusion of asylum seekers, persons whose claims have been rejected or who have an irregular status.

Who is proposing it

among stakeholder organisations:
ECRE, PICUM

Where does the proposal find support?

in the European Parliament:
ESF+ legislative resolution/amendments adopted:
- As general objective of the fund, ESF+ to be in line with, among others, the commitment of the Union and its Member States to achieve the Sustainable Development Goals (Amendment 88 on Art 3)

3.2 Broader participation

4.1.1.12 3.2.1

What is proposed

To create a new EU funding instrument offering direct financial support to cities in return for receiving refugees and asylum seekers.

Under such an incentive scheme, municipalities would apply directly to receive funding for the integration of refugees and asylum seekers whom they wish to welcome. Working with municipalities, local-level NGOs and civil society initiatives would also benefit from such funds. The instrument should be linked to resettlement and/or EU-internal relocation programmes.

Who is proposing it

The proposal was included in the European Parliament’s resolution on the MFF post-2020 of 14 March 2018. French president Macron in his speech to the EP on 17 April 2018 likewise proposed the creation of a European programme to “directly financially support local communities that welcome and integrate refugees”.

In more detail, the proposal has been articulated by Gesine Schwan of the Humboldt-Viadrina Governance Platform in cooperation with the European Stability Initiative (Knaus & Schwan 2018). In a similar vein, it has been promoted in the context of the project ‘When Mayors Make Migration Policy’ (Bendel et al. 2019).
It also resonated in the position paper of the Urban Agenda Partnership on Inclusion of Migrants and Refugees coordinated by EUROCITIES, calling for direct access for cities to AMIF funding and Block Grants for cities (EUROCITIES 2018c).

| Where does the proposal find support? | The Commission proposals on the 2021-2027 MFF did not explicitly take up the concept. Potentially, however, the proposed AMF Thematic Facility could be used in an ad-hoc manner to implement elements of the proposal. Member States could also programme their national AMF programmes to support municipalities willing to receive refugees and/or asylum seekers. |

### 4.1.1.13 3.2.2

#### What is proposed
To introduce reasonable **minimum allocations for local authorities and civil society organisations** across all priorities within **national AMF programmes** and reserve these for actions implemented by such actors (ECRE: 30% for such actions under the asylum and integration objectives).

#### Who is proposing it
among stakeholder organisations: ECRE, EUROCITIES

#### Where does the proposal find support?
in the European Parliament:
AMF legislative resolution/amendments adopted: ---
- however, adding to the fund’s scope of support the establishment and development of regional and local strategies for the implementation of the Union acquis related to asylum, legal migration and integration, in particular local integration strategies (Amendment 187 on Annex III.1.a)
- adding to the fund’s scope of support capacity building of integration services provided by local authorities (Amendment 216 on Annex III.3.a new)

### 4.1.1.14 3.2.3

#### What is proposed
To facilitate civil society and local/regional authority participation in implementing national programmes across all AMF intervention fields, the maximum **EU co-financing rate** should be increased from 75% to **80%**. **Member States** should be encouraged to **provide matching funds** for activities supported by the AMF.

In addition, the proposed 90% EU co-financing rate for integration measures implemented by civil society organisations and local/regional authorities should be extended to any AMF-funded action pursued by these actors.

#### Who is proposing it
among stakeholder organisations: ECRE
Where does the proposal find support? *in the European Parliament:*  
**AMF legislative resolution/amendments adopted:**
- to keep the maximum EU co-financing rate at 75%, but Member States to be encouraged to provide matching funds for activities supported by the AMIF. The EU co-financing rate for integration measures implemented by civil society organisations and local/regional authorities shall be a minimum of 80% and may be increased to 90% (Amendments 101 and 102 on Art. 12.1 and 12.3)

4.1.15 3.2.4  
**What is proposed**  
To reserve a significant part of funding from the AMF Thematic Facility for local authorities (EUROCITIES) resp. 5% for civil society and local/regional authorities (ECRE) in the annual or multi-annual programmes, to support integration and reception actions implemented locally. It should be assured that the Thematic Facility funding is easily and directly accessible to cities and civil society.

**Who is proposing it among stakeholder organisations:**  
EUROCITIES, ECRE

Where does the proposal find support? *in the European Parliament:*  
**AMF legislative resolution/amendments adopted:**
- to explicitly dedicate the Thematic Facility support for solidarity and responsibility efforts of Member States also to actions at regional or local level and to international and non-governmental organisations (Amendment 92 on Art. 9.1.e)
- to grant a minimum of 5% of the AMF Thematic Facility to local and regional authorities implementing integration actions (Amendment 97 on Art. 9.6)

4.1.16 3.2.5  
**What is proposed**  
To strongly anchor a **mandatory Partnership Principle** – ensuring meaningful and inclusive participation of civil society, local and regional authorities, equality bodies, national human rights institutions and social partners in the programming, implementation, monitoring and evaluation of EU funds under shared management – not only in the Common Provisions Regulation but also in the AMF and ESF+ Regulations. With regard to the AMF, the provision should be as far-reaching and inclusive as proposed by the European Parliament for the ESF+ regulation, also ensure that the EU Agency for Asylum is associated to the process of developing the programmes at an early stage, and expressly also extent to mid-term and retrospective evaluation (ECRE). The European Commission should also assess the extent to which partners have been adequately involved in the development of the national programme, closely supervise the practical implementation and make recommendations to the Member States in this respect. Some funding should be earmarked for capacity building of civil society organisations and local/regional authorities.

**Who is proposing it among stakeholder organisations:**  
CEMR, ECRE (re. AMF), EUROCITIES, Social Platform (re. ESF+)
Where does the proposal find support?

**in the European Parliament:**

**AMF legislative resolution/amendments adopted:**

- To add to the AMF regulation a provision on partnerships (without prejudice to Art. 6 CPR), to include at least local and regional authorities or their representative associations, relevant international organisations, nongovernmental organisations, in particular refugee and migrants organisations, national human rights institutions and equality bodies, and economic and social partners. These partners shall be involved in a meaningful way in the preparation, implementation, monitoring and evaluation of programmes (Amendment 73 on Art. 3a new)

**ESF+ legislative resolution/amendments adopted:**

- Each Member State to ensure in partnership with local and regional authorities, meaningful participation of social partners, civil society organisations, equality bodies, national human rights institutions and other relevant or representative organisations in the programming and delivery of employment, education, non-discrimination and social inclusion policies and initiatives supported by the ESF+ strand under shared management; in accordance with Art. 6 CPR and the European Code of Conduct on Partnership (Amendment 94 on Art 8.1)

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### 4.1.17 3.2.6

**What is proposed**

To introduce, as an **EU-level Partnership Principle**, partnership planning also to the AMF **Thematic Facility** under direct or indirect management (Union actions). The European Commission should adopt the practice of regular consultation with civil society organisations and other stakeholders on the planning and implementation of activities under the Thematic Facility. Also on EU level programming and monitoring of implementation should take place in a consultative manner.

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**Who is proposing it**

**among stakeholder organisations:**

ECRE

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**Where does the proposal find support?**

**AMF legislative resolution/amendments adopted:**

- the Commission to ensure regular engagement with civil society organisations in the preparation, implementation, monitoring and evaluation of work programmes of the Thematic Facility (Amendment 93 on Art. 9.2)

- the Commission to also consult with civil society organisations, including migrants and refugees organisations, when preparing delegated acts concerning actions eligible for higher co-financing (including integration measures implemented by local and regional authorities and civil-society organisations), operating support and further development of the common monitoring and evaluation framework (Amendment 60 on Recital 56)

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### 4.1.18 3.2.7

**What is proposed**

To **include European civil society stakeholders in the ESF+ Committee** (up to now bringing together government and social
partner stakeholders), to reflect their key role in the design and delivery of the ESF and to come closer to an EU-level Partnership Principle.

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<td>Social Platform</td>
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<td></td>
<td>ESF+ legislative resolution/amendments adopted:</td>
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<td>• Each Member State to appoint to the ESF+ Committee one government representative, one representative of the workers' organisations, one representative of the employers' organisations, one representative of civil society, one representative of the equality bodies or other independent human right institutions in accordance with Art. 6.1.c of the future CPR; at Union level the ESF+ Committee to include one representative from each of the organisations representing workers' organisations, employers' organisations and civil society organisations. (Amendment 152 on Art. 40.2 and 40.3)</td>
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</table>
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Comprehensive and mainstreamed, longer-term support for the integration of migrants: Options for the 2021 to 2027 MFF*

1. INTRODUCTION

This ReSOMA Policy Options Brief takes a closer look at proposals which aim to make EU funding support for migrant integration more relevant for comprehensive policies with a longer-term orientation. Such proposals aim to ensure that EU support focuses not only on short-term measures in the arrival context but effectively contributes to mainstreamed integration policies across Europe. Thus, this ReSOMA brief addresses a key topic driving current efforts at improving the EU’s response to migration and integration challenges in the next 2021 to 2027 multiannual financial framework (MFF). Both civil society organisations and local/regional authorities have put forward ideas and concrete proposals for changes in the legal base of the AMF and ESF+ funds as presented by the European Commission in 2018.

This brief introduces the policy option, presents the corresponding proposals advanced by EU-level stakeholder organisations and traces the patterns of debate and support that the proposals garner, with a special focus on the European Parliament and the state of negotiations as of February 2019. Furthermore, the evidence base of the stakeholder proposals is discussed, pointing to key findings that support the arguments and alternative solutions advocated by stakeholder organisations.

1.1 Policy option mainstreamed, longer-term policies – to promote comprehensive integration policies with a long-term orientation and mainstreaming them on Member State and EU level

Advancing this policy option is informed by the overtly short-term character of integration policies and the weak consideration of integration objectives across relevant policy areas in many Member States. EU funding programmes have the potential to improve the quality of integration policies in terms of their long-term orientation and of mainstreaming them into all areas which impact on the integration outlook and well-being of migrants and refugees – such as housing, employment, education and health. On Member State level, the policy option stresses EU support for ongoing, seamless and well-integrated measures aimed at enabling the inclusion of migrants and refugees in all walks of life, with no funding gaps emerging along

*By Alexander Wolffhardt, Migration Policy Group
the integration pathway. On EU level, the policy option relates to a stronger emphasis on social inclusion goals in overall EU economic and social governance, and how these goals translate into specific objectives of EU programmes conceived to facilitate integration.

Proposals put forward by stakeholder organisations start from the fact that EU integration funding up to now focuses on short term needs related to the arrival and reception context in many Member States, with comparatively little funding used for e.g. long-term labour market integration. Moreover, governments have wide discretion on whether EU funds implemented on national level become available for longer-term integration measures or would in any way contribute to mainstreaming of migrant integration across policies. As a result, measures that receive EU support often are peacemeal, poorly integrated into coherent, longer-term strategies and not linked to an all-of-government and all-of-society response to immigration. What is more, policies aimed at longer-term and more comprehensive integration are under threat where governments perceive them as creating pull factors or being unpopular with the own citizens (cf. ReSOMA Discussion Brief on ‘maintaining mainstreaming’, chapter 4 on key issues and controversies).
2. PROPOSALS, THEIR DEBATE AND EVIDENCE BASE

The policy option aiming for mainstreamed, longer-term integration policies responds to the Commission proposals for the 2021 to 2027 Multiannual Financial Framework (EC 2018a, b, c) with regard to:

- the European Social Fund (as ESF+) to become a foremost EU funding source for migrant integration with a longer-term impact, in particular for measures related to labour market integration and social inclusion;
- ESF+ specific objectives relating to the funds’ various intervention areas (including labour market participation, education and training, equal access to services and fighting poverty and deprivation);
- provisions to concentrate ESF+ resources on challenges identified in national reform programmes, in the European Semester and Country-Specific Recommendations (CSR);
- the Common Provisions Regulation (CPR) in future also applying to the Asylum and Migration Fund (AMF), next to the Structural Funds which include ESF+;
- provisions in the CPR to link programming of funds implemented in Member States more strongly to the European Semester and Country-Specific Recommendations (CSR) made in this context;
- horizontal and thematic ‘enabling conditions’ in the CPR, setting out prerequisite conditions for implementation of the funds, incl. on effective application of the EU Charter of Fundamental Rights;
- provisions in the AMF regulation stipulating a focus of integration spending under this fund on the early stages of integration of third-country nationals.

More information on the Commission proposals for the upcoming EU programme period can be found in the ReSOMA Discussion Briefs on ‘sustaining mainstreaming’ and ‘cities as providers of services’, chapters 3.2 on the EU post-2021 policy agenda.

2.1 Specific proposals put forward

Specific stakeholder proposals put forward as reaction to the Commission proposals and relevant for this policy option (details cf. Annex) include:

- A proper balance among social and macroeconomic objectives in the European Semester process, to ensure adequate investment for social inclusion and poverty reduction;
• more regular monitoring through the European Semester of how Member States implement enabling conditions, including the application of the EU Charter of Fundamental Rights;
• mainstreaming of integration support across the ESF+, with third country nationals as recipients of measures under all the specific objectives and an enhanced equality clause;
• strong coordination on EU level and between Managing Authorities in Member States of the actions and priorities implemented under AMF, ESF+ and ERDF shared management, to the point of establishing cross-Fund national integration Monitoring Committees;
• priorities of the European Action Plan on the integration of third country nationals to be addressed in national operational programmes for ESF+ implementation;
• ongoing, effective support for early and long-term integration and foregoing of possible funding gaps due to the way Member States implement AMF and ESF+.

2.2 Patterns of debate & support

The thrust of these proposals is widely supported by the European stakeholder organisations that have voiced an opinion on the Commission’s legislative proposals. Organizations active in the social inclusion field are particularly outspoken on the social dimension of the European Semester and its implications for how EU monies are spent in Member States. It is also the aspect where stakeholder positions appear most critical of the Commission plans. Nevertheless, both civil society- and local authority-based stakeholder organisations are broadly supportive of the Commission proposals to increase integration spending under ESF+ and suggest modifications that would better ensure the actual use of ESF+ as a lever for integration mainstreaming, as well as for longer-term orientation of integration policies in Member States.

Among the membership of European stakeholder organisations, the interest in additional impetus for integration mainstreaming arriving through EU programmes is highest in countries where there is a lack of comprehensive policies with a long-term outlook. That said, better coordination among EU funds as they are being implemented through different authorities is a shared concern of integration stakeholders throughout the EU (typically, AMIF has been channeled through home affairs portfolios and ESF through ministries of employment and social affairs). If not done in a proper way, the fear goes, uncoordinated priority-setting in Member States AMF and ESF+ programmes may lead to painful funding gaps, missing out on support for integration in both funds.

While stakeholder concerns related to AMF pertain to the risk of non-use for integration in the absence of minimum allocations to the integration/legal migration programme objective, fears related to the ESF+ stem from the reluctance of many Member States to effectively regard migrant integration as within
the scope of this fund. For many actors on national level, the ESF is traditionally tied to a European cohesion philosophy and a notion of using EU means to facilitate socio-economic catch-up processes of Member States and a reduction of development gaps among European countries. The idea to spend EU means on migrants and not for the ‘own people’ often sits uneasy, in particular in countries hard hit by the economic crisis in recent years, or where a self-perception as country of transit still prevails. A similar reluctance can be observed in the context of the ERDF, which may be used to finance reception infrastructures.

**Support in the European Parliament**

In the European Parliament, as co-legislator of the future EU funds in the 2021 to 2027 MFF, a number of the concerns brought forward by stakeholder organisations have been taken up in the ongoing negotiations.

With regard to the **ESF+ regulation**, amendments adopted by Parliament in the plenary vote on 16 January 2019 (based on the Report of the Employment and Social Affairs Committee) reflect Parliament’s eventual positions on the legislative proposals tabled by the Commission (EP 2018 c,d, 2019b). With a view to the stakeholder proposals, these amendments refer to

- the inclusion of challenges identified in the Social Scoreboard under the European Semester in the provisions on thematic concentration of national ESF+ spending (details cf. 3.1);
- additional general objectives of the ESF+ (and supporting related Member State policies) stressing inclusive societies, the quality of employment, education and training, integration and social cohesion, eradication of poverty, non-discrimination and access to basic services, among others (details cf. 3.3);
- additional specific objectives of the ESF+, among others related to the inclusiveness of education and training systems, services for access to housing, and access to equal social protection, including for disadvantaged groups and the most deprived people (details cf. 3.3);
- highlighting of integration challenges as the context in which the ESF+ will be implemented, and acquisition of language skills, reduction of segregation and non-discriminatory education systems, among others, as goals of the fund (details cf. 3.3);
- compulsory inclusion of Managing Authorities in coordination mechanisms with other EU funds, in order to deliver integrated approaches; with specific reference to coordination of ESF+ with the AMF but also ERDF and the Rights and Values programme (details cf. 3.4);
- inclusion of the EU Action Plan on the integration of third country nationals in the Union initiatives whose implementation is to be supported from ESF+ (details cf. 3.5);
- a separate specific objective of ESF+ solely dedicated to the promotion of long-term socio-economic integration
of third country nationals, including migrants (details cf. 3.6);

- clarification of the scope of integration measures supported from ESF+ as focusing on legally residing third-country nationals or on those in the process of acquiring legal residence, including beneficiaries of international protection (details cf. 3.6).

Amendments to the **Common Provisions Regulation**, adopted by the European Parliament on 13 February 2019 based on the report of the Committee on Regional Development (EP 2019c), refer to:

- the Commission, when assessing the, to take into account not only relevant, but also Inclusion of the overall policy objectives of the structural funds (including a more social and inclusive Europe implementing the European Pillar of Social Rights) in the needs assessment leading to Partnership Agreements between Commission and Member States, thus going beyond CSRs (details cf. 3.1);

- progress in support of the European Pillar of Social Rights, territorial needs and demographic challenges to be taken into account in reporting of Structural Funds’ implementation, mid-term reviews and adjustments following mid-term reviews (details cf. 3.1);

- arrangements for implementation of the European Pillar of Social Rights as horizontal enabling condition, applicable to all specific ESF+ objectives (details cf. 3.2);

- provision that enabling conditions are also seen as prerequisite for inclusive and non-discriminatory (and not only effective and efficient) use of EU support (details cf. 3.2);

- access to non-segregated education and training as part of the national strategic policy framework for the education and training system which is required as thematic enabling condition (details cf. 3.3);

- a concrete action plan as well as measures to combat segregation through access to quality services for migrants and refugees as part of the national strategic policy framework for social inclusion and poverty reduction which is required as thematic enabling condition (details cf. 3.3).

Amendments to the **AMF regulation** in the EP legislative resolution of 13 March 2019, based on the report of the Civil Liberties, Justice and Home Affairs (LIBE) Committee, further address some of the above-mentioned stakeholder concerns (EP 2018e,f, 2019a):

- stress on the complementarity, coordination and coherence among AMF and the Structural Funds when implementing the specific objective related to integration and social inclusion of third-country nationals, as well as in the annual performance reports of Member States (details cf. 3.4);
• scope of AMF as supporting integration measures for third-country nationals and actions supporting Member States’ capacities in the field of integration that are generally implemented in the early stages of integration, complemented by interventions to promote the social and economic inclusion of third-country nationals financed under the structural funds (details cf. 3.6).

2.3 Evidence base of proposals

Lack of long-term integration policies, paired with sparse EU support

Evidence for the need of a longer-term orientation of integration policies in many Member States comes from comparative research on integration policies in Europe. For example, MIPEX – the Migrant Integration Policy Index⁵ – has been assessing a number of indicators that typically point out whether countries are prepared to provide migrants and their children an enduring, long-term perspective for inclusion and socio-economic well-being. Examined whether EU Member States provide e.g. targeted support for labour market integration (including recognition of qualifications, active economic integration measures, policies for youth and women and support to access public employment services), only Austria, Denmark, Estonia, Finland, Germany, Portugal and Sweden had favourable or slightly favourable policies in place, based on 2014 data (i.e. the countries scored at least 60 out of 100 in the policy index). With regard to targeting needs in the education system, similarly indicative for the long-term quality of integration policies (including advice and guidance, language learning support, migrant pupil monitoring, targeted measures to address educational needs as well as teacher training), only Denmark, Estonia, Finland and Sweden scored favourable (i.e. higher than 80), with Belgium, Czechia, Italy, the Netherlands, Portugal, Romania, Romania and the UK implementing slightly favourable policies (scoring 60 to 79; Huddleston et al. 2015).

Against this background of widely lacking long-term orientation of integration policies across Europe, the impact of EU instruments supposed to enhance integration policies needs to be assessed. ECRE/UNHCR research on AMIF implementation has pointed out a focus on short-term measures in several Member States. Although a definitive assessment of long-term sustainability of AMIF-funded measures is not yet possible, based on a survey among civil society organisations it seems safe to say that in particular in Bulgaria, Hungary and Romania the use of AMIF mainly for the provision of basic services is unlikely to lead to integration support that is functional in the longer term (ECRE/UNHCR 2018: 30). Assessing 26 national AMIF interim evaluation reports, the research also finds that countries tend to focus AMIF integration spending on measures in the early phase of settling in, such as language learning (16 Member States supporting activities), civic and social orientation (13 countries) as well as initial support to access services (11 countries). Fewer states, on the contrary, invest AMIF means in areas which are crucial to providing

⁵ www.mipex.eu
migrants with a longer-term integration perspective, such as education (8 countries), housing (6 countries) and health (5 countries), with only labour market integration (14 countries) being the exception to the rule (ECRE/UNHCR 2019: 38f).

With regard to the use of the ESF for support of integration measures with a longer-term character, the picture is somewhat different. A 2018 survey among national (regional, in the case of Belgium) authorities represented in the European Integration Network (EIN) identified 15 countries/regions using ESF for migrant-related employment measures, 13 countries/regions funding vocational training from ESF, 14 countries/regions supporting migrant integration under the fund’s social inclusion bracket, and eight countries helping migrants in the education field with ESF means. Two countries each, according to this survey done for a report of the European Court of Auditors, use ESF in the housing and health areas (ECA 2018: Annex III; concerning the use of ESF for migrant integration see also ReSOMA Policy Option Brief ‘High levels of EU support for migrant integration, implemented by civil society and local authorities’, chapter 2.1.3).

**Little consideration for migrant integration in the European Semester**

The proposition to strengthen the role of the European Semester in guiding Member States efforts for migrant integration hinges on a number of preconditions. First of all, consideration of the employment and social performance of Member States in the governance of the Economic and Monetary Union (as envisaged by the European Pillar of Social Rights) needs to be assured in a policy process originally designed to coordinate macro-economic policies. Once this basic precondition is fulfilled, migrant integration challenges must feature in the assessment of policy needs in Member States conducted together with the Commission, and from there make it into the rather small number of country-specific recommendations (CSR) designed to drive reforms at national level. These recommendations have to be agreed by the Commission and the Member States and will remain to a have a non-binding and unanimous character under the 2021 to 2027 MFF.

It is exactly this context of rather ambitious EU governance objectives in which stakeholder proposals focus on the role of the European Pillar of Social Rights in the European Semester and a strengthening of the EU’s hand in the implementation of recommendations. Proposals along these lines can draw on the regular analysis of the adequacy and completeness of CSRs from a social inclusion point of view provided by the European Social Network (ESN), the platform of local public services in the EU. Its ‘Reference Group on the European Semester’ has been assessing Country Reports and recommendations in the light of the needs identified by the health, social welfare, employment, education and housing services represented in the network. While it notes that ‘the importance of the country reports in the European Semester and the level of detail of the analysis contained have increased’ over the years (ESN 2016: 22), the Reference Group continues to highlight important gaps and areas where more attention is needed in the Commission’s analysis of social policy challenges. For the 2017 Country Reports, these included topics...
with implications for migrant integration as relevant as accessibility of the health system (in Latvia), housing and homelessness (in Ireland), integration of ethnic minorities groups (in Portugal) and adequately trained staff in social services (in Czechia), to give a few examples (ESN 2017: 22). Looking at the 2016/17 Country-Specific Recommendations, group members representing five Member States expressed a rather negative assessment of the CSRs, while 12 of them agreed or at least partially agreed that the CSRs adequately addressed the main socio-economic challenges of their countries (ESN 2016: 22).

Particularly revealing is the comparison between the priorities for the European Semester identified by ESN’s ‘country profiles’ and the CSRs actually adopted by the Council in the following year. While challenges related to the integration of migrants and refugees were explicitly highlighted by ESN stakeholders in 2017 for Austria, Belgium, France, Germany, Italy, the Netherlands, Poland and Sweden (ESN 2017), the CSRs adopted in 2018 only in the cases of Austria (concerning the wide performance gap between students with and without a migrant background) and France (related to labour market conditions for people with a migrant background) eventually contained relevant recommendations (CEU 2018 a,b).

*Insufficiently coordinated implementation of EU funds*

Little systematic analysis exists about the quality of coordination among the implementing authorities and intermediate bodies in Member States of AMIF, ESF and other EU instruments used to support migrant integration. However, the already mentioned report of the European Court of Auditors also highlights the problematic situation with regard to complementarity, synergies, overlaps and risk of funding gaps. Building on own research, reports of Member State supreme audit institutions and the survey among Member State authorities, it concludes that without effective coordination there is a clear risk of inefficient policy implementation due to the complexity of funding arrangements (ECA 2018: 30).

Overall, next to AMIF eight EU instruments were identified by the ECA report as being used for migrant integration in the current programme period, with 23 countries/regions using ESF, six countries/regions using Erasmus+, five countries/regions using the ERDF, four countries/regions the FEAD, three countries/regions the EAFRD and one country/region each EaSI, Horizon 2020 and the Youth Employment Initiative. More than 400 organisations are calculated to be involved in managing integration measures financed by the EU in the current programme period. In spite of provisions in the EU regulatory framework asking Member States for mechanisms to coordinate the different European instruments, at least in eight Member States national audit institutions identify weaknesses in these coordination mechanisms (ECA 2018: 28-30, Annex III).

Asked about coordination issues among EU funds used for integration, civil society and city funding experts point to key challenges for the upcoming MFF on Member State level."

**ReSOMA Transnational Feedback Meeting ‘Towards coordinated, complementary and comprehensive integration policies funded from EU programmes’, March 2019. Participants**
Concerns include the duplication of calls resulting from lack of inter-ministerial coordination, overconcentration and disregard for absorption capacities, lack of multi-fund coordination in particular with regard to ‘unusual’ instruments like EAFRD (supporting integration in rural areas), as well as discrepancies in target group definitions (in particular concerning the residence status of beneficiaries). Provisions for flexibility and adaptability in national programmes is seen as a precondition for using the EU instruments to support innovative, multi-annual and sustainable measures which appropriately respond to migratory and social developments in the course of a programme period.

As the European Social Fund, relabelled ESF+, is intended to gain a much bigger role in EU support for migrant integration, evidence like this weigh in even more heavily. It directly informs stakeholder proposals on better coordination among Managing Authorities and all other authorities and intermediate bodies that are involved in the implementation of the funds.

represented experiences in Belgium, Czechia, Estonia, France, the Netherlands, Poland and Spain.
### 3. Annex: Stakeholder proposals and their support in detail

#### 4.1.19 3.1

**What is proposed**

To ensure a proper **balance among social and macroeconomic objectives in the European Semester process**, so that adequate investment for social inclusion and poverty reduction in line with the European Pillar of Social Rights, including for the socio-economic integration of third-country nationals, is guaranteed. Investments from ESF+ must be able to take into account regional and local realities and support measures tailored to the needs and target groups identified at local level without having to focus on CSR priorities that do not correspond to the most urgent or prevalent needs in an area.

**Who is proposing it**

*among stakeholder organisations:*

EU Alliance for Investing in Children (incl. PICUM), EUROCITIES, Social Platform

**Where does the proposal find support?**

*in the European Parliament:*

**ESF+ regulation amendments adopted:**

- to add to the provisions on thematic concentration of national ESF+ spending that Member States shall address the challenges identified in the Social Scoreboard under the European Semester (Amendment 92 on Art. 7.1)

**Common Provisions Regulation (CPR) amendments adopted:**

- the Commission, when assessing the Partnership Agreement, to take into account not only relevant country-specific recommendations, but also the overall policy objectives of the structural funds, including a more social and inclusive Europe implementing the European Pillar of Social Rights (Amendment 98 on Art. 9.1 referring to Art. 4 CPR)
- Member States, when regularly presenting to the monitoring committee and the Commission the progress in implementing the programmes, to take into account not only progress in support of the country-specific recommendations, but also of the European Pillar of Social Rights (Amendment 12 on Rec. 13)
- mid-term reviews of structural funds (incl ESF+) to take into account not only challenges identified in relevant country-specific recommendations adopted in 2024 and the socio-economic situation, but also the state of implementation of the European Pillar of Social Rights and territorial needs with a view to reducing disparities and economic and social inequalities (Amendment 119 on Art. 14.1.b);
- adjustments of programmes following mid-term reviews of structural funds to take into account not only new challenges and relevant country-specific recommendations, but also progress with the European Pillar of Social Rights as well as demographic challenges (Amendment 18 on Rec. 19)
### 4.1.1.20 3.2

**What is proposed**

Enabling conditions with their fulfilment criteria should have a strong role for a thorough implementation of the European Pillar of Social Rights and in ensuring that investments are in full compliance with the EU Charter on Fundamental Rights. The European Semester and its Country Reports should have an important role in monitoring how Member States implement enabling conditions, including on the effective application and implementation of the EU Charter of Fundamental Rights.

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<th>Who is proposing it</th>
<th>among stakeholder organisations: EU Alliance for Investing in Children (incl. PICUM), Social Platform</th>
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| Where does the proposal find support? | **in the European Parliament:**
| | Common Provisions Regulation (CPR) amendments adopted:
| | • to add as horizontal enabling condition (i.e. prerequisite conditions for implementation of funds applicable to all specific objectives) arrangements at national level to ensure the proper implementation of the principles of the European Pillar of Social Rights that contribute to upward social convergence and cohesion in the EU (Amendment 379 on Annex III Table row 6a new)
| | • to stress that enabling conditions linked to specific objectives are a prerequisite not only for effective and efficient use of EU support granted by the funds, but also for their inclusive and non-discriminatory use (Amendment 16 on Rec. 17) |

### 4.1.1.21 3.3

**What is proposed**

To mainstream support to the integration of third country nationals into all objectives and sections of ESF+ as a cross-cutting priority, by including them as recipients of measures under all the specific objectives (and not only in targeted measures under the objective ‘Promoting socio-economic integration of third country nationals’). The promotion of equal opportunities for all, without discrimination based on nationality and residence status should be added to the equality clause of the fund (Art. 6.1).

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<th>Who is proposing it</th>
<th>among stakeholder organisations: ECRE, PICUM, Social Platform</th>
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<td>Where does the proposal find support?</td>
<td><strong>in the European Parliament:</strong> ESF+ regulation amendments adopted:</td>
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• to add to the general objectives of the ESF+ inclusive societies, high levels of quality employment, job creation, quality and inclusive education and training, equal opportunities, eradicating poverty, including child poverty, social inclusion and integration and social cohesion;

  to add to the Member State policies supported by the fund equal access to the labour market, lifelong learning, high quality working conditions, social protection, integration and inclusion, eradicating poverty, including child poverty, investment in children and young people, non-discrimination, gender equality and access to basic services
  (Amendment 88 on Art. 3)

• to add to the specific objectives of the ESF+ the inclusiveness of education and training systems, services for access to housing and person-centred healthcare, and access to equal social protection, with a particular focus on children and disadvantaged groups and the most deprived people
  (Amendment 89 on Art. 4)

• to highlight integration challenges related to the management of migration flows as the context in which the ESF+ will be implemented (Amendment 8 on Rec. 5)

• to stress as goals of ESF+ support the integration into the labour market of disadvantaged groups and economically inactive; acquisition of language skills; the reduction of horizontal and vertical segregation; the non-discriminatory nature, accessibility and inclusiveness of education and training systems; the accessibility of the teaching profession for minorities and migrants; educational schemes for low-skilled adults to acquire a minimum level of literacy; the study of languages, also through a wider adoption of the toolkit for language support for refugees developed by the Council of Europe (Amendments 16 on Rec. 13, 18 on Rec. 14, 25 on Rec. 15d new, 30 on Rec. 18, 54 on Rec. 28b new)

Common Provisions Regulation (CPR) amendments adopted:

• to add as fulfilment criteria of the thematic enabling condition (i.e. a prerequisite condition for implementation of ESF+) related to a national strategic policy framework for the education and training system that it includes measures ensuring access to non-segregated education and training (Amendment 396 on Annex IV Policy Objective 4 row 2/column 4)
• to add as fulfilment criteria of the *thematic* enabling condition (i.e. a prerequisite condition for implementation of ESF+) related to a national strategic policy framework for social inclusion and poverty reduction that it also includes an action plan; an that it includes measures to combat segregation through access to quality services not only for migrants but also for refugees (Amendment 401 on Annex IV Policy Objective 4 row 4/column 4)

### 4.1.1.22 3.4

**What is proposed**

To **strongly and systematically coordinate** and align on EU level and between Managing Authorities the actions and priorities implemented by Member States funded under **AMF, ESF+ and ERDF shared management**, to avoid gaps between short, medium and long-term integration interventions at local level. The actions and priorities of the AMF decided each year should be coordinated with the ERDF and ESF+. Rules for ESF+ and AMF programmes should be as closely aligned as possible, to ensure coherent programming, management and monitoring requirements.

**Cross-Fund national Integration Monitoring Committees** (ECRE) should be tasked with reviewing planned calls, identifying unmet needs, providing advice as well as input to programme evaluation.

**Who is proposing it**

*among stakeholder organisations:*

EUROCITIES, ECRE, Social Platform

**Where does the proposal find support?**

*in the European Parliament:*

ESF+ regulation amendments adopted:

• to specify (in the provisions on coordination, complementarity and coherence with other EU funds) that mechanisms for coordination to avoid duplication of effort need to include Managing Authorities responsible for implementation to deliver *integrated approaches,* coherent and streamlined support actions (Amendment 92 on Art. 7.1)

• to stress synergies between ESF+ and the Rights and Values programme to ensure that ESF+ can mainstream and scale up actions to prevent and combat discrimination, racism, xenophobia, anti-semitism, islamophobia and other forms of intolerance, as well as devoting specific actions to prevent hatred, segregation and stigmatisation, including bullying, harassment and intolerant treatment (Amendment 28 on Rec. 17a new)
to stress (in the context of the role of ESF+ for promoting integration of third-country-nationals) that this may include initiatives on local level and that ESF+ funded actions are not only complementary to actions financed under the AMF, but also the European Regional Development Fund and those funds which can have a positive effect on the inclusion of third-country nationals (Amendment 34 on Rec 20, similar Amendment 45 on Rec. 24)

- the authorities responsible for planning and implementing the ESF+ to coordinate with the authorities designated to manage the interventions of the AMF, in order to promote the integration of third-country nationals at all levels in the best possible way through strategies implemented mainly by local and regional authorities and non-governmental organisations and by the most appropriate measures tailored to the particular situation of the third-country nationals (Amendment 35 Rec. 20a new)

**AMF regulation amendments adopted:**

- the Commission to assess, through the coordination mechanisms set up in Member States among the Managing Authorities of AMF and the Structural Funds, the coherence and complementarity between the funds, and the extent to which measures implemented through each fund contribute to the integration of third country nationals (Amendment 22 on Rec. 14)

- to render the effective integration and social inclusion of third-country nationals a separate specific objective of AMF and to promote it in complementarity with other EU Funds (Amendment 70 on Art. 3.2c)

- the annual performance reports of Member States to also set out information on the complementarity, coordination and coherence between the actions supported under AMF and the support provided by other Union funds, such as the structural funds (Amendment 156 on Art. 30.2c)

### 4.1.123 3.5

**What is proposed** To address the priorities of the **European Action Plan on the integration of third country nationals in national operational programmes for ESF+ implementation.** The Action Plan should be included in the list of key Union initiatives whose implementation is to be supported from ESF+. Specific reporting on how the Cohesion Funds contribute to the implementation of the European Action Plan on the integration of third-country nationals should be requested by the Commission.
Who is proposing it
among stakeholder organisations:
ECRE, PICUM

Where does the proposal find support?

in the European Parliament:
ESF+ regulation amendments adopted:
- to add the Action Plan on the integration of third country nationals to the Union initiatives whose implementation is to be supported from ESF+ (Amendment 4 on Rec. 3)

4.1.1.24 3.6

What is proposed
To ensure ongoing, effective support for early and long-term integration in the broader framework of building inclusive societies, and to avoid that the planned division of responsibilities between the funds is used as a justification by Member States to exclude specific target groups such as asylum seekers and people with precarious status from broader integration programmes. Integration of asylum seekers and newly arriving migrants must not fall between the ESF+ and the AMF, so that integration and participation from the day third country nationals arrive in an EU Member State is ensured. In particular, early labour market integration should be fundable from the ESF+.

Who is proposing it
among stakeholder organisations:
ECRE, PICUM, Social Platform

Where does the proposal find support?

in the European Parliament:
AMF regulation amendments adopted:
- to specify that measures financed under AMF should support integration measures tailor-made to the needs of third-country nationals that are generally implemented in the early stages of integration, and horizontal actions supporting Member States’ capacities in the field of integration, complemented by interventions to promote the social and economic inclusion of third-country nationals financed under the structural funds; thus replacing the Commission proposal that AMF is to support measures that are generally implemented in the early stage of integration, whereas interventions with a longer-term impact should be financed under the ERDF and ESF+ (Amendment 20 on Rec. 13; reflected in Amendments 179 on Annex II.2.a and 211/216 on Annex III.3.g/3.a new)
ESF+ regulation amendments adopted:

- to specify that a distinct specific objective is dedicated to the promotion of long-term socio-economic integration of third country nationals, including migrants (Amendment 89 on Art. 4.1.viii)
- to specify that the scope of integration measures supported from ESF+ should focus on third-country nationals legally residing in a Member State or where appropriate in the process of acquiring legal residence in a Member State, including beneficiaries of international protection (Amendment 35 Rec. 20a new)

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