

## CONCORD Analysis of NDICI

*The EU's commitment to sustainable development was expressed throughout the negotiation processes of the Agenda 2030 and the Paris Agreement, and was further confirmed in the recently adopted European Consensus on Development. These commitments must now drive the next generation of EU development cooperation instruments.*

*This paper analyses in depth the problematic NDICI proposal which will not allow the EU to live up to its sustainable development and poverty eradication commitments, but instead presents an explicit turning away from those commitments. The paper is based on the previous [redlines](#) document of CONCORD setting out the minimum standards the NDICI needs to follow and arguing against the merging of twelve very different existing instruments.*

### On Sustainable Development

1. The Commission's proposal of a single external instrument undermines the main objectives of the EU development cooperation policy by bridging under the same funding envelope both ODA and non-ODA actions. Consequently, the risk of diverting sustainable development and poverty eradication to other external policy priorities is extremely high, compromising the EU's commitment to sustainable development. As per recital 8, it is clearly suggested that development cooperation is subsumed under EU's Global Strategy and that it will take a marginal role in EU's external action. Art 7 of the regulation then subsequently fails to provide any clarification on the policy framework that will guide the regulation.
2. While we are pleased to see human rights and conflict response in the objectives, this proposal is not a development instrument as its title suggests. **Both the general and the specific objectives of the regulation explicitly exclude sustainable development and do not mention development cooperation or the eradication of poverty apart from a general reference to art 21 TEU.** Sustainable development is only mentioned in relation to Security Sector Reform (art 9) and in relation to EFSD+. Development cooperation itself only appears under the monitoring (art 31), which also states that monitoring and evaluation will be done according to the objectives of the regulation. Given that it is missing in the objectives this mention makes development cooperation irrelevant for monitoring and evaluation.
3. The SDGs first appear in relation to the aim of the thematic programmes and their support to global and transregional initiatives, which is not aligned with the universality principle of Agenda 2030. They are then mentioned as part of the general principles, art 8/6, but only in relation to the need of addressing potential interlinkages between SDGs and promoting integrated actions that can deliver co-benefits in a coherent way. While this is positive and aligned to the spirit of Agenda 2030, contributing to the implementation of the SDGs as such is clearly not the aim of this regulation. This is unacceptable given that the budgetary period it covers is instrumental for making progress towards reaching the SDGs. In addition to the highly



critical nature of the EFSD+ proposals, it is misguided to place sustainable development solely in that section.

4. The Regulation proposal mentions aid effectiveness principles on numerous occasions and specifies that they should apply to the Union's development cooperation. However, without any clarity on the remit of development cooperation in the regulation aid effectiveness principles will not be implemented in a consistent way, which will in turn jeopardize the sustainability of EU action. At the very least, the proposal should explicitly state that aid effectiveness will be implemented for all ODA-eligible actions.

## On Civil Society

1. The core of the regulation is weak regarding the recognition of civil society as an actor of development or as an actor for the implementation of the whole instrument. All references to the role of civil society are relegated to the annexes which are less binding as they can be amended through a delegated act.
2. Although the promotion of an enabling environment and the democratic and political role of civil society form a part of the geographic programmes' priorities (people section) as well as the main purpose of the civil society thematic programme, references to the role of Civil Society as an implementer and development actor only appear in the partnership section of Annex 1. There is no role for civil society in the thematic programme on Global Challenges. Civil society's role in delivery of basic services to populations in need is not part of the Civil Society thematic programme priorities anymore.
3. There is no opening or reference in the regulation to establishing civil society support programmes/facilities in the country or regional geographic programmes as it is the case with the Civil Society Facility in the ENI instrument or with the ACP civil society priority sector included in the national indicative programmes.
4. It is highly concerning that the consultation of civil society during the programming process as well as at monitoring and evaluation stages is not compulsory but rather only mentioned as an option where appropriate.

## On Human Rights and Democracy

1. Human rights and democracy are well reflected in the specific objectives and in both geographic and thematic programmes and may stand to gain from the previous architecture. However, the Regulation only provides weak political signal and vague policy guidance at a time when human rights are increasingly under pressure globally.
2. The areas of cooperation covered by both geographic and thematic programmes are very vague and focused only on civil and political rights, falling behind the scope of the existing EIDHR instrument. A number of important aspects of the EU Strategic framework and Action Plan on Human Rights and Democracy are missing - such as economic and social rights and the UN guiding principles on Human Rights and Business, access in favour of specific groups suffering from discrimination, women's rights, or indigenous rights.



## On Gender

1. Not only does the Regulation fail to propose a sound approach to gender equality, if adopted it would represent a major step backwards. It makes a few cursory references to gender equality, limited to gender mainstreaming, and some short additional references to women's economic empowerment, women's rights and gender-based violence in the Annexes. Besides mainstreaming alone not being sufficient to ensure any meaningful impact, no indication is given on how it will be effectively implemented.
2. Instead of increasing funding for gender equality, the Regulation does the exact opposite: by including gender equality under the existing target for human development (20%), it clearly reduces funding for both areas and is in direct contradiction to commitments under the European Consensus for Development and the Gender Action Plan II.

## On Migration

1. The general lack of reference to universal, regional or specific EU human rights instruments - such as the ICCPR (International Covenant on Civil and Political Rights), the ECHR (European Convention on Human Rights), and the EU Charter of Fundamental Rights and Freedoms is problematic in itself. The lack of reference of these instruments in relation to migration highlights the intention to address migration outside of these frameworks and as a purely political endeavor.
2. There is reference to addressing root causes of irregular migration. However, this is not a correct term and blurs the lines of what is actually needed. There are root causes of human mobility - demographic reasons, climate related reasons, the will to make a better life elsewhere. There are also root causes for forced displacement such as war, conflict, and natural disaster. By generalizing, the term loses its case and region-specific meaning. By adding the term irregular, it completely diminishes the root causes of forced displacement of people in need of international protection. (Preamble 29, 30, Annex 3 and Annex 4)
3. While the text references 'trafficking in human beings and smuggling of migrants' it should rather refer to trafficking and smuggling of human beings. As there are no legal pathways for asylum seekers, and persons in need of international protection, they often depend on the services of smugglers to get to the EU. By referring to smuggling of migrants, the text does not emphasize the importance of recognizing protection needs among mixed migration flows.
4. In Annex 2, specifically in the chapter on migration and mobility, an additional point should be added on the recognition and protection of persons in need of international protection, in full respect of the non-refoulement principle and the prohibition of collective expulsion. Evidently, all of these safeguards should be integrated into the regulation and not kept in annexes which are delegated acts. In Annex 4, the same lack of clarity on the nature of possible interventions occurs, when discussing the rapid response pillar.



## On the 20% Benchmark for Human Development and Social Inclusion

1. In the current DCI, there is an overall 20% benchmark for basic social services, with a focus on health and education, as well as secondary education. In addition, there is a 25% benchmark under the GPGC for social inclusion and human development, which includes health, education, gender and children. The commitment to allocate at least 20 % of ODA to social inclusion and human development was more recently also reiterated in the European Consensus for Development. The Regulation for NDICI does refer to the benchmark albeit only in the recitals. This has to be added to the regulation proper.
2. Actions in the area of gender equality and women's empowerment have been integrated in the 20% human development target. This clearly reduces funding for both areas.

## On the 25% Benchmark for Climate Objectives

1. While the increase in percentage from 20% to 25% is a welcome step, the increase is very low, reflecting a lack of ambition compared to stated intention of being a leader in tackling climate change.
2. As in previous EFIs regulations, the commitment is also referred to in the recitals, as a contribution to the overall MFF target; however in the NDICI proposal the language is less comprehensive, failing to promote actions that can be mutually supportive in addressing climate change and environmental protection.

## On Geographic and Thematic programmes

1. The Impact Assessment accompanying the Regulation stresses that geographic programmes will allow for pursuing EU economic and policy interests (including non-ODA actions) in all partner countries (p.17). This leaves no doubt that the core of the instrument is actually designed to meet the EU's political interests and not sustainable development commitments. This is further corroborated in art. 11.2.e.
2. The shift towards greater flexibility has come at the expense of the thematic pillar. By putting a clear emphasis on the geographic programmes of the regulation the balance between the geographic and thematic programmes is jeopardised. This may undermine the achievement of long-term development results.
3. While thematic programmes continue to be presented as complementary to geographic programmes, it is uncertain to which extent they will be able to continue providing added value to the EU's action and to prove their strategic relevance, as documented in the mid-term review. The areas of concern are human rights and democracy, human development and social inclusion, climate change and environmental protection. In fact, while the NDICI proposal is designed to prioritize actions under its geographic pillar, there is no guarantee that those important themes, which are currently mostly addressed via thematic programmes, will be promoted and integrated within the geographic pillar.

4. It is positive that Art 8 on general principles foresees, among others, to mainstream climate change, environmental protection and gender equality across the regulation, as well as and the promotion of interlinkages between SDGs to deliver co-benefits across multiple objectives. However, the areas of intervention are only listed in the annexes, thus, promoting “siloes”, rather than integrated, approaches.

## On Governance and Flexibility

1. In its opinion on the Impact Assessment Report of the single instrument, the Regulatory Scrutiny Board stated that the governance structure for the new broad instrument was not sufficiently explained. The proposed regulation sheds only partial light on future governance arrangements: it is for instance still unknown whether it is the EEAS or the EC (or which DG) that will provide political steering, and which will ultimately decide how resources will be allocated. Given that the remit of development cooperation under the proposal is not defined, it is unclear which aspects of the regulation EU development actors will be leading on.
2. When it comes to the Council and the Parliament, there will be only one MS committee for the whole instrument and uncertainty remains on the scrutiny role of different committees of the EP. With one single committee, the risk is high that the focus will primarily be on the geographic programmes and top EU political priorities, while the thematic programmes and the cross cutting issues and principles will be given little attention and scrutiny. Without sustainable development among the objectives it risks to not be on the table at all.
3. The governance of the instrument also raises concerns. There is a vast increase in flexibility as a result of the new ‘emerging challenges cushion’ and the Rapid Response Pillar. However, there is little clarity on how this additional flexibility will be governed including the function of Parliamentary scrutiny. The circumstances, criteria and procedure for the use of the ‘emerging challenges and priorities cushion’ have not been clearly established and there are no safeguards to ensure that the cushion will not be used to provide quick fix responses to complex issues that in fact require a long-term strategic approach.

## On Title II Programming

1. Safeguarding the good elements of EIDHR and allowing non government consented intervention is welcome. We also welcome that LDCs and countries in fragile situations will be given priority in resource allocation (Art 11/3) and that a range of criteria, such as poverty, inequality, human development and environmental vulnerability, are included as basis for programming of geographic allocations (Art 11/2). This is positive as it represents a step forward to the current differentiation approach and allows cooperation with MICs to be based on indicators that go beyond purely economic ones, such as GDP. Art 11/2 also finally mentions poverty, inequalities, and human development for the first time.
2. However, without the regulation making poverty eradication and fighting inequalities its objectives, these assurances remain hollow. In addition, it is problematic that ART

11/2 in section e) of the regulation introduces direct conditionality - thus basing programming on EU interests explicitly.

## On Rapid Response Actions and Peace and Stability

1. The proposed regulation maintains the key features that constituted the added value of the IcSP. It remains fully untied and flexible in its modes of implementation and remains subsidiary and complementary to geographic and thematic programmes ensuring coherence and continuity in EU programming.
2. The increase in the allocation and introduction of priorities such as resilience and linking of humanitarian aid and development action, which are key in the operationalisation of the humanitarian-development nexus, are welcome. This is an opportunity to enhance a community resilience approach while avoiding a focus on State resilience.
3. In spite of indicating red lines in accordance with the EUTF article 41(2), the inclusion of capacity building for military actors as part of a development cooperation instrument remains a concern in particular as there is no threshold in allocation.
4. There is lack of clarity about the criteria and who triggers the rapid response actions. While Capacity building for Security and Development (CBSD) seems to have a predominant role - both as a part of the conflict prevention assistance and in addressing global and emerging threats - the peace component seems weak. The proposal places conflict-prevention and peacebuilding only in the annex areas of interventions linked with state-building.

## On Monitoring and Evaluation

1. In Art. 3, the proposal states that what the EU should measure the attainment of the general and specific objectives of the regulation, and refers to Art. 31 for monitoring, reporting and evaluation modalities. Development cooperation, while being absent from the objectives, appears under monitoring Art. 31.8. The same applies for the SDGs: indicators are mentioned in Art. 31.1, but not in Art.3. This creates a paradox in which reporting and monitoring are envisaged for issues that are not clearly stated as objectives of the Regulation.
2. Additionally, art.31 refers to general indicators (presented in annex VII) supposedly aligned with SDG indicators to assess the extent to which the objectives have been achieved. These indicators are very arbitrary and only cover a small portion of the objectives and policies covered by the instrument while many important elements are missing, such as gender inequality, decent jobs creation and youth employment, or objectives in the area of migration.
3. The indicators used to prepare the annual report should not be limited to those listed in Annex VII, but also include the indicators and expected results established in the multi-annual indicative programmes. This way, a detailed assessment of the implementation and results of the different geographic and thematic programmes is provided. The report should also provide an analysis of the way aid and development effectiveness principles, among the other principles established in article 8, have been implemented across the whole instrument. It is essential in the annual report to assess



the implementation of all benchmarks applicable to the instrument - including the overall target of 25% of the budget expenditure supporting climate objectives (recital 28), the 10% target for actions in the area of migration (recital 30) and the 20% of ODA for social inclusion and human development - which includes gender equality and women's empowerment.

## On DAC-ability

1. The 92% DAC-ability commitment for the NDICI is welcome. However, as the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD) regularly updates the ODA definition, it would be important to ensure that the 92% commitment corresponds to the current ODA definition as established by the OECD DAC. Given this proposal it is all the more questionable why sustainable development is not part of the objectives of the regulation.
2. It is to be noted that the current 90% DAC-ability threshold concerns the whole of current Heading 4 (External Action), whereas the new Regulation refers to the NDICI only and not the whole new Heading 6.

## On EFSD+

1. The EFSD+ represents a major modality of cooperation and the intention is to rely more on guarantees and blending in future geographic programmes. However, it is unclear how much resources will be allocated to the EFSD+, for what purposes, and under which conditions.
2. The EFSD+ chapter of the NDICI regulation provides much less guidance, safeguards and criteria than the existing regulations of the EFSD (2017) and the External Lending Mandate of the European Investment Bank. Some of the key objectives and elements of compliance are missing such as the empowerment of women and youth, the target of 28% spending in the area of climate change, the additionality requirement, and the fact that actions should be designed to comply with ODA and the Busan development effectiveness principles and should not contribute to tax avoidance/ or tax evasion.
3. The proposed regulation implies that a potentially large amount of geographic programmes' budget will be implemented through modalities aiming at leveraging private finance. It does so despite the fact that they have not yet been fully evaluated and that the eligibility criteria ignore the UN guiding principles on business and human rights, or other international standards applying to the corporate sector, and remain without any reference to grievance and remedy mechanisms.
4. The fact that the NDICI regulation reiterates that the External Action Guarantee should not be used to provide essential public services is positive and should be maintained.



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