

## CONCORD Analysis of NDICI August 2018

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

*The proposal of combining 12 previous external instruments into one through the NDICI may have advantages and disadvantages when it comes to strengthening the EU as a sustainable development actor and ensuring that it truly lives up to its commitments throughout a crucial financial period for achieving the SDGs. This paper analyses the NDICI proposal in depth from the vantage point of safeguarding the EU's unique role and reputation as a leading, principled donor.*

*In CONCORD's opinion, the Commission's proposal does not satisfy the basic [redlines](#) that CONCORD set out in April 2018. To realise any of the potential opportunity that the European Commission maintains is at the core of its proposal, substantial changes would have to be made to the NDICI. Neither sustainable development, and the SDGs, are the core drivers of the proposed instrument nor does it safeguard some of the positive features of previous instruments. The following outlines CONCORD's initial views on the proposal as well as recommendations for improvements.*

### On Sustainable Development

1. The Commission's proposal of a single external instrument brings both ODA and non-ODA actions under the same funding envelope. CONCORD supports this if the aim is to provide the possibility of tackling inequalities in Middle-Income Countries (MICs). However, if it is aimed at funding non-ODA actions in ODA-eligible countries, there is a risk that sustainable development and poverty eradication funding will be diverted to other external policy priorities. The instrument would have to be strengthened significantly to minimize space for such diversion, and it would gain significantly from clarity.
2. While we are pleased to see human rights and conflict response in the objectives, the proposal is lacking in strategic references to sustainable development, development cooperation and poverty eradication. The following areas of the Regulation should be strengthened to ensure that sustainable development is at the heart of the instrument:
  - a) Sustainable development, combating inequalities and poverty eradication should be explicitly mentioned as objectives in art. 3.2: both the general and the specific objectives of the regulation fail to mention sustainable development, development cooperation or poverty eradication apart from a general reference to art. 21 TEU. Relegating development to a mention of the treaty article diminishes the importance of the role of development cooperation. A direct reference to development cooperation only appears under monitoring (art. 31), but the latter also states that it will be done according to the objectives of the regulation.
  - b) The Agenda 2030 and the Paris agreement should be added to the Policy Framework of the Regulation (art.7).
  - c) In order to ensure there is no arbitrary hierarchy of policies, recitals 7 and 9 should be strengthened: recital 8 on the EU's Global Strategy is much stronger than the recitals on the Consensus for Development (recital 9) and the international commitments - such as Agenda 2020, the Paris Agreement and the Addis Ababa Agenda Action Plan (recital 7) which should act as the blueprint for the instrument.



- d) Sustainable development should be added to the strategic priorities of the regulation (recital 17).
3. The general principles under art. 8 form the underpinning basis for the European Consensus on Development; however, the principles remain too general and do not provide sufficient safeguards for the full implementation of the Consensus. While we welcome the emphasis on human rights, the rule of law, and gender equality, the following elements in art. 8 should be improved:
  - a) Art. 8 is the first article to mention the SDGs, but only on addressing interlinkages and co-benefits for multiple objectives. This is directly contrary to the EC's announcement that SDG implementation is at the core of this instrument: art. 8 should be amended to unequivocally embed the SDGs within the heart of EU external action.
  - b) The reference to conditionality on the basis of contractual relations with the EU should be deleted as it directly contravenes development principles (art. 8.4).
  - c) The reference to applying development effectiveness principles "where applicable/appropriate" should be removed as these principles should be upheld across the whole instrument to ensure the sustainability of EU actions.
  - d) While the mainstreaming of climate change, environmental protection and gender equality is welcomed, these important areas are undermined by other areas of the Regulation (see specific points below).
4. It is welcome that the thematic programmes are linked to the pursuit of SDGs. However, given that the majority of the funding is in the geographic pillar, the implementation of the SDGs should be outlined as the primary aim and a priority of the geographic pillar.

## On Civil Society

We are pleased to see the EU's commitment to support civil society reflected in the objectives of the regulation, and to see reassurances that such assistance, together with support for human rights, will be provided independently of governments consent. Overall however, we regret that the regulation is rather weak in referring to and clarifying the role of civil society:

1. All references to the role of civil society are relegated to the annexes. This is problematic if annexes can be amended through delegated acts. 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 I. Finally, there is no role for civil society in the thematic programme on Global Challenges and civil society's role in the delivery of basic services to populations in need is no longer part of the priorities of the civil society thematic programme.
2. The definition of civil society in the recitals should reflect the language of the 2012 CSO Communication as well as the Consensus for Development. It should fully reflect the substantial role of civil society in many priority areas of the instrument such as: promoters of democracy; defenders of rights holders, the rule of law, social justice and human rights; development implementers; and instrumental partners in reaching the most vulnerable and marginalised people.
3. There is no reference in the Regulation to establishing civil society support programmes/facilities in the country or regional geographic programmes as is the case for the Civil Society Facility in the ENI instrument or with the ACP Civil Society Priority Sector in the national indicative programmes. Such reference should be added.
4. The consultation of civil society during the programming process as well as at monitoring and evaluation stages is mentioned as an option "where appropriate", though we believe that it should be compulsory.

## On Human Rights and Democracy

1. Human rights and democracy are well reflected in the specific objectives and in both geographic and thematic programmes; they may stand to gain from the previous architecture. However, the Regulation only provides weak political signalling and vague policy guidance at a time when human rights are under pressure globally.
2. The areas of cooperation covered by both geographic and thematic programmes are very vague and focus only on civil and political rights, falling behind the existing EIDHR instrument's scope. A number of important aspects of the EU Strategic framework and Action Plan on Human Rights and Democracy are missing and should be added - such as economic and social rights; 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. The Regulation fails to propose a sound approach to gender equality. Worse, if adopted it would represent a major step backwards. It makes a few cursory references to gender equality - limited to gender mainstreaming - and short additional references to women's economic empowerment, women's rights and gender-based violence in the annexes. Mainstreaming alone is not sufficient to ensure meaningful impact and no indication is given on how it will be effectively implemented.
2. Instead of increasing funding for gender equality, the Regulation, by including it under the existing target for human development (20%), clearly reduces funding for both gender and human development, thereby contradicting commitments made under the European Consensus for Development and the Gender Action Plan II.
3. Given gender equality is a cross-cutting issue that is far broader than human development, and in line with EU's commitments, the Regulation should include specific targets for gender: at least 85% of EU's ODA should be spent on gender (collating mainstreaming and targeted actions) with 20% of these funds specifically allocated to targeted actions.

## On 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. 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 reiterated in the European Consensus for Development. The Regulation refers to the benchmark, albeit only in the recitals. In order to ensure spending on social services, the benchmark on human development and social inclusion should be ring-fenced and added to the main articles of the regulation with a specific reference to contributing to basic social services such as health, education and social protection.
2. As explained above, in contradiction with the specific language used in the European Consensus on Development, actions in the area of gender equality and women's empowerment have been integrated in the 20% human development target. This reduces funding for both areas. Separate targets should be established.

## On Migration

First and foremost, CONCORD welcomes that migration has been integrated in the instrument given that it is an issue that influences and is influenced by multiple policy areas. This is certainly preferable to a separate migration instrument. The following points could be strengthened:

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 in relation to migration might send the signal that migration will be addressed outside of these frameworks. As such, it is necessary to ensure that the EU's actions are embedded in the international normative framework by adding specific reference to human rights conventions and standards.
2. The use of the generic terminology, such as "addressing root causes of irregular migration", is not valid as it blurs the lines between situations that have not been properly distinguished. While there are root causes of human mobility - for instance demographic, climate-related, economic - and root causes for forced displacement - such as war, conflict, and natural disaster - using this general and hence inaccurate terminology cannot provide proper policy guidance. 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 III and annex IV). We would therefore recommend to make the wording more specific.
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 II, 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 IV, the same lack of clarity on the nature of possible interventions occurs, when discussing the rapid response pillar.

## On the 25% Benchmark for Climate Objectives

1. According to the mid-term review of current EFIs, and the NDICI explanatory memorandum, progress has been made in mainstreaming climate objectives into development programmes. For instance, the EDF climate contribution increased from 3.3% in 2014 to 23.3% in 2016 and DCI climate contributions increased from 17.7% in 2014 to 24.9% in 2016. These are positive trends, which were stimulated by the current commitments across EFIs to contribute to the overall 20% target for climate action and demonstrate the feasibility of increased ambition. However, the same review confirmed that more needs to be done to address the scale of other environmental challenges such as biodiversity loss and depletion of natural resources, which are closely interlinked with climate change.
2. The NDICI proposal sets out to contribute to the overall MFF target of 25% for climate action, and foresees to dedicate 25% of its envelope to climate objectives. While we welcome this increased commitment, we believe that it is still not enough if the EU wants to live up to its international commitments through its budget. It is also insufficient for addressing the extent of the challenge and the urgency required to tackle it - particularly in developing countries which are more vulnerable and exposed to its impacts. In addition, the commitment remains aspirational, as it is included only in the recitals. Unlike the previous DCI regulation, it fails to recognize the value of mutually supportive actions which address climate change and environmental protection, and increase impact.
3. We believe there should be a more ambitious 50% spending target for climate and environment related objectives, to support actions with clear and identifiable co-benefits across sectors. This target should be added to the main articles of the regulation,

acknowledging that both climate change and environmental degradation are key challenges that undermine the attainment of sustainable development.

4. Such a target should be seen as complementary to the overarching principle of mainstreaming climate and environmental issues across actions and programmes supported by this instrument, as foreseen in art 8. In this respect, it's important that the regulation includes the provision to carry out appropriate environmental screening in art. 21.5, including for climate change and biodiversity impacts for actions financed under the NDICI. If carried out properly, such screenings (such as EIAs and SEAs) can be effective tools for mainstreaming. A more explicit reference should be added, in the context of art. 8, to ensure that no expenditure is contradictory with climate and environmental objectives, but coherent with meeting the objectives of the Paris Agreement and other multilateral environmental agreements. In addition, references to the environmental dimension of sustainable development should be included, instead of only the economic and social ones as is presently the case in various articles such as art. 11.2(c), art. 16.2(b), and art. 23.4.

## On Geographic and Thematic programmes

1. The Impact Assessment accompanying the Regulation stresses that geographic programmes will pursue EU economic and policy interests (including non-ODA actions) in all partner countries (p.17). This could lead to a prioritisation of the EU's political interests over its commitment to sustainable development and undermines the aid effectiveness principles. 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 which could undermine the achievement of long-term development results and the SDGs. As such that balance should be reconsidered. There is need for a clear analysis of what should be financed via the thematic programmes and the amount of money necessary to achieve this. This analysis should be taken into account when deciding on the division between geographic and thematic programmes. In addition, this reconsideration should not only take place now, but should also be taken forward during the programming process. An analysis of the future NIPs on how much funding is dedicated to the areas usually addressed by thematic programmes such as Human Development and Social Inclusion and gender should inform the programming of the thematic programmes to balance the funding and reach the targets.
3. Although this focus on geographic programmes is in line with the aid and development effectiveness principles and 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; and climate change and environmental protection. In fact, while the NDICI proposal is designed to prioritize actions under its geographic pillar, there should be guarantees that those important themes, which are currently mostly addressed via thematic programmes, will not fall between the cracks and will be promoted and integrated within the geographic pillar as well.
4. As mentioned above, it is positive that art. 8 seeks to mainstream climate change, environmental protection, and gender equality across the regulation; as well as the promote the interlinkages between SDGs to deliver co-benefits across multiple objectives. However, the areas of intervention are only listed in the annexes, thus, promoting "siloed", rather than integrated approaches. The proposal should add, in the annexes, a framework for operationalising the SDGs in an integrated fashion.

## 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 broader instrument was not sufficiently explained. The proposed regulation sheds only partial light on future governance arrangements: it is still unknown whether it is the European External Action Service or the European Commission that will provide political steering and ultimately decide how resources are 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 only be 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 and interests, while the thematic programmes and the cross cutting issues and principles will be given little attention and scrutiny.
3. The governance of the flexibility 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.
4. As such, the governance arrangements for the instrument, including the use of flexibilities, should be urgently clarified.

## On Programming

1. There are a number of positive elements in Title II on programming which are welcome, including the safeguarding of essential elements of EIDHR such as allowing non government consented intervention; the prioritisation of LDCs and countries in fragile situations in resource allocation (art. 11.3); and the range of criteria, such as poverty, inequality, human development and environmental vulnerability, that are specified as the basis for the programming of geographic allocations (art. 11.2). This is positive as it represents a step forward on the current differentiation approach and allows cooperation with MICs to be based on indicators that go beyond the purely economic, such as GDP. This approach should be strengthened, as mentioned above, by including poverty eradication and combating inequalities within the explicit objectives in art. 3.2.
2. The introduction of conditionality in art. 11.2(e) tying aid to EU interests and values is concerning and runs contrary to aid effectiveness principles. Art. 11.2(e) should be deleted.

## 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 art. 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. Clarity should be made about the criteria and who triggers the rapid response actions. These actions must respect the humanitarian perspective and ensure humanitarian expertise is taken into account in decision-making to avoid being driven by EU's political interests.
5. 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 is weaker: references to conflict-prevention and peacebuilding only appear in the annexes for interventions linked with state-building.

## On Monitoring and Evaluation

1. In art. 3, the proposal states that 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. Only eight indicators are listed, and they cover a small portion of the instrument's objectives and policies. Many important ones (ie on gender inequality, decent jobs creation and youth employment) are missing.
3. It is unclear from the regulation how and when detailed and regular assessments of the implementation and results of the different geographic and thematic programmes will be provided. It seems that the indicators used for the annual report will be limited to those listed in annex VII and that there will be no monitoring and analysis of the way aid and development effectiveness principles, among the other principles established in art. 8, are implemented across the whole instrument. Moreover, it is unclear whether the annual report will also assess the implementation of all benchmarks applicable to the instrument.

## On DAC-ability

1. CONCORD welcomes the 92% DAC-ability commitment for the NDICI, if the aim is to leave space for cooperation with Middle-Income Countries, where substantial pockets of poverty and levels of inequality prevail. If that is the intention, CONCORD believes that this should be specified in order to prevent the use of EU funding for actions that would undermine sustainable development.
2. Additionally, given that the Development Assistance Committee of the OECD regularly updates the ODA definition, it is important to ensure that the 92% commitment corresponds to the *current* ODA definition as established by the OECD DAC.
3. Finally, the current 90% DAC-ability threshold relates to the entire Heading 4 (External Action), whereas the proposed 92% DAC-ability only covers the NDICI, and not the whole new Heading 6. The current heading-wide commitment on ODA should be reiterated to ensure that sustainable development remains at the heart of EU's external action.

## On the EFSD+

1. The EC's NDICI proposal reflects the intention to increasingly rely on guarantees and blending as a modality of cooperation in future geographic programmes. In some countries, as much as 100% of the national envelope could be disbursed through the EFSD+. This is being done

despite the fact that these modalities have not yet been fully evaluated, and that their development additionality has not yet been demonstrated. In fact, as of July 2018, no single EFSD project has begun. Therefore, before moving forward with the EFSD+, an evaluation of the existing EFSD should be carried out, and this type of modality should be expanded only if it is proven that it brings development additionality.

2. The proposal states that operations up to €60 billion could be guaranteed, with a provisioning rate ranging between 9% to 50%. This means that it is impossible to know how much funding will be channeled through the EFSD+ vs. other funding modalities. The existing EFSD regulation is much clearer on that front (art. 12.1 which states that the guarantee should not exceed €1.5 billion). The same level of clarity should be integrated to the NDICI.
3. According to EC, the preamble (including benchmarks, mainstreaming, and DAC-ability) and NDICI's guiding principles (art.8) apply to the EFSD+. As state above, the latter need to be substantially improved, namely on aid effectiveness principles.
4. Additionally, CONCORD is concerned that important existing safeguards (in the EFSD) have been removed from the EFSD+, and calls for their inclusion, namely:
  - a) In the eligibility criteria: the UN guiding principles on business and human rights, and other international standards and conventions applying to the corporate sector (including ILO conventions); the need for projects to provide additionality (CONCORD would welcome if *development* additionality was spelled out)
  - b) Details on reporting and accounting: neither in the EFSD+ chapter, nor in art. 31, does the proposal specify which elements should be included in the reporting, while CONCORD believes that they should be specified (for instance: additionality and added value as well as assessment of compliance with aid effectiveness principles and with the (amended) objectives of the regulation).
  - c) Provisions on transparency and public disclosure of information (art. 18 of the EFSD).
  - d) Language on grievance and redress mechanisms (art. 19 of the EFSD regulation). CONCORD believes it should be included and improved through the creation of a central grievance mechanism managed by the EC.
  - e) Language on the exclusion of certain activities and of non-cooperative jurisdictions (art. 22 of the EFSD).
5. On a positive note, the fact that the NDICI regulation reiterates that the External Action Guarantee should not be used to provide essential public services is welcomed and should be maintained.

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