Contribution to the report on externalisation

1. ***Examples of externalisation measures***

Several migration projects financed under the European Union's NDICI (Neighbourhood, Development and International Cooperation Instrument) aim to reduce irregular migration to the EU[1]. Key examples include:

- **Return and reintegration programmes:** These feature in EU-funded projects, such as the Migrant Protection, Return and Reintegration Programme for Sub-Saharan Africa (MPRR), coordinated with the International Organization for Migration (IOM). These programmes offer "assisted voluntary return" from countries including Niger or Libya to countries of origin. The MPRR working on voluntary returns for migrants stranded in transit countries in Africa is labelled as facilitating safe and regular migration; however, return programmes can be interpreted as migration restriction to the EU rather than as facilitating safe migration[2].

- **Joint border management and capacity building:** NDICI funds support training and equipping border guards, police forces, and coast guards in Libya, Tunisia, and Niger.[3] For instance, EU development funds indirectly support Libyan and Tunisian coast guards, raising questions of compatibility with development goals.[4]

- **Interceptions at sea** The EU uses non ODA funds for projects in Libya that support the Libyan coast guard. The Libyan coast guard intercepts migrants at sea and returns them to Libya. The inhumane conditions in Libyan detention centres have

[1] Irregular migration here includes people seeking protection.
[2] „...the MPRR (Action 3) working on voluntary returns for migrants stranded in transit countries in Africa is labelled as facilitating safe and regular migration; however, return programmes can be interpreted as migration restriction to the EU rather than as facilitating safe migration." P. 33 in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International
[3] See specifics on projects in Niger „the 'provision of relevant tools, equipment and/or infrastructure to government offices and border management posts" (p. 27); on Libya: „The February 2017 Memorandum of Understanding between Libya and Italy provides funding and equipment for Libyan authorities to control their borders, with a commitment by the EU to provide complementary funding." page 35 and on Tunisia „The Tunisia component (€25m) aims to improve the Tunisian Garde Nationale Maritime's training infrastructure as well as establish a MRCC and a fully operational integrated surveillance system along the Tunisian coast" p. 38 in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International.
[4] „...the EU currently prioritizes migration actions that the OECD considers a particular risk to the integrity of ODA, such as migration and border management as well as return, over labour migration or regular pathways. Several funded actions, such as capacity building of border guards, border management and the fight against human smuggling, appear incompatible with the requirement that the primary purpose of ODA is the promotion of economic development and welfare of developing countries" p. 6. in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International.

been well documented.[5] The EU continues to support the Libyan coast guard including €20 million of NDICI funding: allocating €12m for the establishment of a Border Guard Training Academy and €8m to upgrade the Maritime Rescue Coordination Centre (MRCC)[6]. In February 2023, the EU gave five vessels to the Libyan Coast Guard under the EUTF for Africa. [7] Even if the equipment financed by the NDICI is not used for human rights abuses and crimes against humanity, providing this equipment increases the probability that the Libyan coastguard will identify migrant boats and that the people on board will be brought to dangerous conditions in Libya. In addition, there is extensive evidence that EU ODA funding human rights training for Libyan staff is not being followed.

- **Use of flexible incentives and conditionality:** The NDICI includes an incentive-based approach that links development aid disbursement to cooperation on migration control, including return and readmission. This constitutes de facto conditionality and can amount to extraterritorial enforcement of EU migration policies.[8]

If available, please provide information in relation to these examples on the following: ***a)*** *What is the (legal) basis for these measures, specifically, are they based on formal or informal agreements?;* ***b)*** *Which entities are responsible for negotiating, concluding and implementing these arrangements (executives/parliaments/agencies e.g. border agencies, police forces or equivalent)?;* ***c)*** *To what extent are these measures practical to implement in practice?*

a) While the NDICI Regulation states that 93% of NDICI funds must comply with the criteria for Official Development Assistance (ODA) established by the OECD, it allocates indicatively 10% of the overall NDICI budget to 'be dedicated particularly to actions supporting management and governance of migration and forced displacement'. The NDICI Regulation also states that 'Migration-related actions pursuant to the Instrument shall be implemented in support of Union migration policy objectives'.

[5] UN Independent Fact Finding Mission (2023) Report of the Independent Fact-Finding Mission on Libya. UN Human Rights Council. (Accessed 08 June 2025).
[6] Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International. https://policy-practice.oxfam.org/resources/from-development-to-deterrence-migration-spending-under-the-eu-neighbourhood-de-621536/
[7] Commissioner Olivér Várhelyi attends the handover ceremony of EU-financed Search and Rescue vessels to Libya - European Commission
[8] „Furthermore, under Criterion 2, making assistance conditional upon partner country cooperation on migration outcomes is not ODA eligible, unless the conditions primarily contribute to the promotion of the economic development and welfare of developing countries, and not primarily to the donor's domestic migration concerns. The rationale for this action is clear in its aim to 'provide incentives for constructive cooperation between partner countries and the EU, including on sensitive issues such as return, readmission and reintegration'.124 The rationale thus appears to promote a migration agenda advanced by the EU rather than a development strategy advanced by partner countries „. P. 28 in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International

b) Implementing entities include the European Commission (DG INTPA, DG NEAR), EU Member States through Team Europe Initiatives, EU Delegations, Frontex, the EU Agency for Asylum, IOM, and local authorities in partner countries.

c) These measures are practically implemented, although with limited documentation and lack of transparency, which complicates monitoring and assessment.

2. ***Transparency and monitoring***

a) There is a major lack of transparency. The legal bases for many NDICI-funded migration activities are not publicly available[9]. Specific implementing agreements, such as contracts with third countries or details of conditionality arrangements, are often undisclosed. Effective scrutiny is further hindered by the instrument's flexible funding arrangements, as well as the Commission's approach of funding activities and equipment it considers non-eligible for ODA (e.g., relating to returns or border management) through funding sources without an ODA commitment.

b) n/a

c) While monitoring obligations exist under the NDICI Regulation, in practice transparency is insufficient. Civil society and even the European Parliament lack full access to programming documents, impact assessments, or procurement contracts.[10]

d) Human rights impact assessments are required under the NDICI Regulation (Art. 29), but there is no evidence that such assessments have been conducted systematically. These assessments should be made public and include risk mitigation strategies.

e) n/a

[9] "Conclusive assessments of the ODA eligibility of NDICI-funded migration actions are not possible, due to the NDICI's broad objectives, vaguely formulated or limited information in regional programming documents, lack of publicly available procurement contracts, as well as the early implementation stage. The European Commission's use of funding from other instruments to cover non-ODA eligible parts of migration actions, Member State contributions through the Team Europe Initiatives (TEIs), and the use of conditional and flexible funding mechanisms to incentivize recipient country's cooperation on EU migration objectives, further complicate effective monitoring" p. 3 in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International

[10] „NDICI's flexible funding mechanisms (i.e. the non-programmable rapid response actions, the cushion of unallocated funding, and Member State contributions to TEIs) and poor documentation hinder Parliament's insight into the programming and implementation. This calls into question the value of the Parliament's observations or whether this is merely a box-ticking exercise. This concern is magnified by the lack of Parliament scrutiny over TEIs. While Parliament is informed when funds This calls into question the value of the Parliament's observations or whether this is merely a boxticking exercise„ p. 47 in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International

3. ***Cooperating States***

a) Cooperating states (e.g., Niger, Tunisia, Libya) receive financial and technical support, infrastructure development, and political partnerships. Benefits may include budget support, technical assistance, and capacity building for security forces and civil services[11].

b) Offers also include development aid, increased diplomatic engagement, and possibly better visa arrangements. However, these are often made conditional on cooperation in return, readmission, or migration control.

c) These arrangements largely bypass democratic scrutiny in both the EU and cooperating states. In the EU, the European Parliament is not always given the same access to documents as the Council[12]. Local civil society in partner countries is usually not consulted in programming decisions.

d) n/a

e) n/a

4. ***Non-State actors***

a) There are several non-state actors involved in externalisation measures:

- IOM: central to return and reintegration programmes.
- Frontex and EUAA (European Union Agency for Asylum): involved in training, capacity building and joint missions.
- EU missions such as EUCAP Sahel Niger: support police and military actors[13].

b) The involvement of these actors raises serious transparency and accountability issues. While entities such as IOM or EU agencies implement key aspects of NDICI-funded migration projects, the documentation on these activities is often vague or inaccessible[14]. Programming documents frequently lack detail on which specific actors receive funding, what equipment is delivered, or what standards govern implementation. Similarly, the use of development funds

[11] See pages 27, 31, 32, 35 in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International

[12] ibid

[13] Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International. Page 25

[14] See for eg. Programme documents for Niger under NDICI „ is vague on specific objectives, merely stating that 'migration management is strengthened'143 including through the 'continuation of migration management policies and the fight against irregular migration and trafficking networks" p. 31 in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International.

to support security forces or coast guards in Libya and Tunisia, where human rights abuses are well documented, undermines safeguards and legal accountability.

5. ***Use of technology***

a) *In what ways is technology, including specific tools or systems, employed to facilitate or support externalisation measures?;* ***b)*** *If technology enabling the collection and processing of personal data is provided to or acquired by cooperating States, where is that data stored and by whom?;* ***c)*** *In which ways does the use of technology contribute to or exacerbate the risk of violations of the human rights of migrants and to what extent are there avenues for justice?*

a) Technology is used for border surveillance, migration data systems, and early warning mechanisms. EU funds are used for infrastructure, information systems, and equipment[15] such as surveillance drones, especially in border areas in Niger and North Africa.

b) n/a

c) The use of surveillance technologies to intercept or deter migrants, such as biometric data systems or equipment given to border police, exacerbates the risk of human rights violations. The lack of transparency and independent oversight limits access to justice for affected individuals. Many of these actions prioritize border control over the safety or rights of migrants, conflicting with ODA principles.

6. ***Human rights implications***

a) Individuals transferred to cooperating states face severe risks. For instance, in Libya, intercepted migrants are returned to detention centres known for inhumane treatment. In Tunisia, cooperation with the coast guard has been linked to forced returns into desert areas. These practices occur despite NDICI's development mandate[16].

[15] "The first two objectives and activities in Tunisia are similar: improving the Tunisian Garde Nationale Maritime's training infrastructure and establishing an operational MRCC. A further objective is completing the coastal surveillance system and training staff to use the installed equipment." p. 38 and "In Libya, EU funds (not necessarily ODA) are spent on border surveillance to rescue/ intercept people, who are returned to inhumane conditions in detention centres. EU development aid is in turn spent on improving these conditions and evacuating people from them. The case studies indicate the detrimental impact that this prioritization can have on country ownership and the principle of mutually beneficial partnerships, as for many developing countries 'migration as such has not been recognised as a principal development priority" p. 50 in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*. Oxfam International.

[16] „The head of Operation Irini also acknowledged 'excessive use of force' by Libyan authorities and that the training it received is not being followed,191 while in March 2023, the LCG allegedly fired gun shots over a rescue ship.192 Violent practices by the Tunisian National Maritime Guard have also been extensively documented. "p. 39 in Z. Weisner and S. Pope (2023) *From Development to Deterrence?*

b) Human rights risks include[17]:

- Arbitrary detention;
- Violence and abuse by border/security forces;
- Lack of due process;
- Limited access to asylum procedures;
- Forced or involuntary returns.

NDICI-funded projects may also reinforce abusive systems, as seen in Libya, where EU support facilitates returns into detention while other EU funds are spent to alleviate conditions there.[18]

c) n/a

7. ***Responsibility and jurisdiction***

a) The EU remains responsible for ensuring that development funding does not support human rights violations. By financing bodies that are responsible for abusive practices, e.g. Libyan coast guard migrant, the EU potentially is linked to these practices especially where actions are foreseeable and funded knowingly.[19] However, the fragmentation of funding sources (e.g., combining ODA and non-ODA funds) creates a lack of clarity.

b) n/a

c) n/a

Note:

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

[17] [17] UN Independent Fact Finding Mission (2023) Report of the Independent Fact-Finding Mission on Libya. UN Human Rights Council. (Accessed 08 June 2025). https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Fhrbodies%2Fhrcouncil%2Fsessions-regular%2Fsession50%2FA_HRC_52_83_AdvanceEditedVersion-EN.docx&wdOrigin=BROWSELINK

[18] "NDICI-funded protection actions reveal significant incoherence between EU migration and development policy, such as in Libya, where non-ODA EU funds facilitate the interception of migrants who are returned to inhumane conditions, and EU development funds are in turn spent on improving these conditions or evacuating people from them. " p.6 in Z. Weisner and S. Pope (2023) *From Development to Deterrence? Migration spending under the EU Neighbourhood Development and International Cooperation Instrument (NDICI)*.

[19] See EPRS study "migration management becoming the ultimate priority of EU funding mechanisms has led to a misuse of development (Article 208 TFEU) and humanitarian aid (Article 214 TFEU), without consideration for the real needs and interests of the parties concerned, even when their detrimental effect on fundamental rights is clear from multiple sources." The EU Approach on Migration in the Mediterranean

This submission is largely based on Oxfam's 2023 report, *From Development to Deterrence*, which analysed a sample of EU-funded migration projects to understand how the EU's 79.5 billion euro aid budget is spent –Neighbourhood, Development and International Cooperation Instrument (NDICI) in reference to the OECDs' and EU aid rules.

It identified 16 migration-related projects in Niger, Libya and Tunisia for examination. Oxfam chose these countries as they are regarded by the EU as key transit countries. These projects are worth 1 percent of the total EU aid budget. The research found that over one-third – 6 in 16 – risk breaking OECD aid rules.

The period of research was up until May 2023. Since the implementation of the fund is ongoing, our report portrays a snapshot of the real-time situation. The report is based on desk research and interviews with personnel of EU institutions and agencies and Oxfam. The report identifies a number of information gaps and how these impact on the ability to draw conclusions about EU funded actions.