

Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund’

(COM(2018) 471 *final* — 2018/0248 (COD))

and on ‘Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa’

(COM(2018) 473 *final* — 2018/0249(COD))

(2019/C 62/30)

Rapporteur: **Giuseppe IULIANO**

Referral	European Council, 25.7.2018 European Parliament, 2.7.2018
Legal basis	Article 77(2), Article 78(2), Article 79(2) and (4) and Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	26.9.2018
Adopted at plenary	17.10.2018
Plenary session No	538
Outcome of vote (for/against/abstentions)	101/0/3

1. Conclusions

1.1. Migration has been a constant thread throughout the European Union’s history, with an evident impact on the EU’s future and on the societies it comprises. Joint management of migration in the EU as a process is incomplete: over recent years, this situation has degenerated into an institutional crisis that has revealed the lack of a common European voice. The current state of affairs has been prompted by the inability of the EU Member States to put in place the common asylum system and give adequate protection to the hundreds of thousands of displaced persons and asylum seekers who are arriving at our borders.

1.2. The EESC considers that the policies of freedom, security and justice must be based on the protection of the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and by the Charter of Fundamental Rights of the European Union.

1.3. A thorough overhaul in the areas of migration, asylum and external borders must be envisaged. It is also essential to make use of the work done by the various European institutions to revise current instruments and offer alternatives that are capable of implementing a common, integrated and coherent migration and asylum policy, in keeping with the principles and obligations that flow from the Treaty and international law.

1.4. Moving ahead with a comprehensive migration and asylum policy, that boosts integration and cooperation between Member States and more clearly reflects the positions of the various European institutions, is crucial if public concerns are to be met, and growing disenchantment with the European venture to be dispelled. The EESC is aware that failing to provide answers or to meet public expectations in these areas generates disappointment and fuels Euroscepticism.

1.5. The EESC views the rising intolerance, racism and xenophobia towards migrants and refugees in the countries of the European Union with concern, and also notes that in some Member States the protection of people’s fundamental rights is being eroded.

1.6. The EESC welcomes the new funds, very different to each other, that will give continuity to the work undertaken, and approves of the increase in their financial allocation. It recalls that the funds are instruments that should help a comprehensive European migration and asylum policy to move forward. The funds cover such diverse areas as migration, asylum and the management of external borders, but the absence of any mention of regular channels for access to the European Union, which would also ensure smooth functioning in these areas, is to be regretted.

1.7. The EESC agrees with the reference to Article 80 as the legal basis of the regulation insofar as it expressly states that the common policies of asylum, migration and external borders are based on the principle of solidarity and fair sharing of responsibilities between Member States applying the Schengen provisions on external borders and visas ⁽¹⁾. It considers that application of the principle of solidarity should be strengthened so it is not seen as an empty word.

1.8. Equal treatment and anti-discrimination policies represent the pillars of European policies, including those concerning the integration of third-country nationals. The removal of the word 'integration' from the title is worrying, as this could be seen as reflecting diminishing concern for this aspect.

1.9. The EESC highlights the need to restore the references to closer cooperation between the Member States on asylum and migration, in particular by supporting funds to pool best practice on asylum. This can be done in part by setting up networks and exchanging information on legal migration and the integration of third-country nationals.

1.10. The EESC welcomes the importance given to flexibility in both funds, as this entails acknowledging the importance of better reflecting the needs of each Member State within the framework of joint action. It also approves of the simplification of procedures, together with the recognition of the importance of evaluation.

1.11. The EESC is pleased that border management can be used to increase the Union's internal security while fully respecting fundamental rights, but regrets that there is no specific mention of the protection of fundamental rights at border installations.

1.12. It is crucial to remind the Member States that sea border surveillance includes not only security and border control, but also search and rescue operations at sea. Reference is made here to the 2012 ECtHR ⁽²⁾ judgment prohibiting refoulement not only on the territory of a State, but also in its extraterritorial action, including action occurring on the high seas.

1.13. A number of EESC opinions ⁽³⁾ have argued that the EU should consider the Schengen area's external borders as common borders; responsibility should therefore be managed at European level.

2. Background

2.1. Migration has been a constant thread throughout the European Union's history, with an evident impact on the EU's future and on the societies it comprises. Joint management of migration in the EU as a process is incomplete: over recent years, this situation has degenerated into an institutional crisis that has revealed the lack of a common European voice. It is essential to make use of the work done by the various European institutions to revise current instruments and offer alternatives that are capable of developing a common, integrated and coherent migration and asylum policy, in keeping with the principles of international law and of the Treaties.

2.2. Migration is one of the political priorities of the Commission, whose main objective is to address this issue in a comprehensive manner. The European Agenda on Migration adopted in 2015 combines immediate responses to the humanitarian crisis situation on Europe's borders with long-term steps to manage migration comprehensively.

2.3. The crisis in the Mediterranean has highlighted immediate needs and has also revealed the structural limitations of EU migration policy and its tools. The EU needs to strike the right balance and send a clear message to Europeans that migration can be better managed collectively. The Asylum and Migration Fund (AMF) and its instrument for financial support for border management and visas are part of this process.

⁽¹⁾ See SOC/582 on the Visa code revision (OJ C 440, 6.12.2018, p. 142).

⁽²⁾ Case of Hirsi Jamaa and others v. Italy (Application No. 27765/09).

⁽³⁾ OJ C 303, 19.8.2016, p. 109; OJ C 451, 16.12.2014, p. 7; OJ C 458, 19.12.2014, p. 7; OJ C 44, 11.2.2011, p.162.

2.4. In the context of the Multiannual Financial Framework 2021-2027, the Commission has proposed to significantly strengthen the general budget for the management of migration and borders, providing the new AMF with a proposed total amount of EUR 10,415 billion (at current prices)⁽⁴⁾ and EUR 9,318 billion (at current prices) for the Integrated Border Management Fund.

2.5. The AFM aims to contribute to the comprehensive management of migration, integration and return, as well as of the Common European Asylum System (CEAS), supporting the Member States as part of an approach based on solidarity and shared responsibility between them.

2.6. As part of the Integrated Border Management Fund, the financial support instrument for border and visa management sets out to assist the Member States to better achieve common measures on the movement of persons across internal borders and on border controls and the common visa policy. Sound management at the external borders of the European Union is a precondition for achieving an area without internal borders where persons and goods can move freely.

3. General comments

3.1. The Committee is pleased that the legal basis for both instruments is cited as being Article 80 TFEU, which states that the common policies on asylum, migration and external borders are governed by the principle of solidarity and fair sharing of responsibility between the Member States.

3.2. Both funds are to be implemented by providing clear and precise guidelines on the management and control systems and audit requirements. Their procedures need to be simplified and administrative burdens reduced, and progress must be made with measures that ensure greater transparency, enhanced accountability and achievement of objectives concerning the funds transferred to the Member States.

3.3. The instruments must be coordinated with other existing provisions, avoiding duplication and operating in full complementarity with the various EU agencies that also work in these areas. Work must be in line with relevant EU policies such as border management, internal security, social inclusion and integration of third country nationals, and the EU's external policy.

3.4. The instruments must be flexible enough to respond to changing challenges in the area of border management and visas. Therefore, in addition to the contribution set for each participating Member State, it is to be welcomed that the remaining funding is being allocated to specific actions where the EU contribution has added value.

3.5. The instruments should serve to coordinate solidarity and shared responsibility between those Member States that fully apply the Schengen provisions (or are preparing to participate fully) on external borders and visas, and should be used for the benefit of the EU's common policy for the management of its external borders. For Schengen to function smoothly, the external borders, which are common borders, should be managed jointly at European level.

3.6. It is essential to harmonise the terminology of 'irregular' or 'undocumented' migration in the texts, in line with the recommendations of the Council of Europe⁽⁵⁾ and indeed of the European Parliament⁽⁶⁾.

3.7. The EU needs a common migration policy with instruments and channels that facilitate regular, ordered migration and uphold the right of asylum. The EESC regrets that the recitals focus specifically on irregular arrivals on border control, making no mention of the need for progress and innovation in respect of an integrated European migration system. Reform of the Dublin system is also essential.

⁽⁴⁾ For more details on these figures, see ECO/460 — Multiannual Financial Framework post-2020 (OJ C 440, 6.12.2018, p. 106).

⁽⁵⁾ Parliamentary Assembly of the Council of Europe. Resolution 1509 (2006).

⁽⁶⁾ European Parliament resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008 (2007/2145(INI))

4. Specific comments

4.1. The EESC considers the proposals for the two financial instruments to be appropriate, acknowledging that the technical and financial assistance provided by the EU to the Member States during the 2015-2017 period through the Asylum, Migration and Integration Fund ⁽⁷⁾ amongst others helped to improve management in the fields of asylum, migration and external borders.

4.2. The increased budget for these funds is welcomed, provided it furthers the aim of an EU migration policy that is integrated, common, consistent and in line with the principles of international law and that simultaneously acknowledges the needs of host societies and EU citizens and works closely with partners around the world.

4.3. The word 'integration' needs to be put back into the AMF's title, since inclusion is a challenge for the Member States.

4.4. The EESC welcomes the fact that the AMF recognises the role that local and regional authorities (including those in the outermost regions), social actors and civil society organisations play in the short-term and long-term integration of third-country nationals, not least into the labour market. It regrets that innovative ways of improving AMF accessibility to these actors are not offered, and highlights the importance of upholding and applying the principle of subsidiarity.

4.5. The EESC welcomes the fact that, in the use of operating support, a Member State may be deemed not to be compliant with the relevant Union *acquis* by failing to fulfil its binding obligations under the Treaties, or if there is a clear risk of a serious breach of the Union's values in the field of asylum and return. It would be desirable for the consequences of such non-compliance in the operational use of the AMF be set out in more detail. The EESC points out that it is in favour of the Commission having the ability to intervene in emergencies provided it follows a transparent procedure to keep European legislators (Parliament and Council) directly informed ⁽⁸⁾. It also advocates the ability to bring infringement proceedings immediately in the event of non-compliance by the Member States in these areas.

4.6. Cooperation with third countries for the proper management of flows of asylum-seekers requires economic incentives, but also incentives relating to technical cooperation and the strengthening of institutions. The Emergency Trust Fund for Africa is a necessary but not exclusive instrument: providing it with an adequate budget must go hand-in-hand with working towards a real partnership between the countries of the European Union and the African nations, with joint responsibility, shared objectives and fitting in with the Sustainable Development Goals. Efforts should be made to improve the coordination of these actions in the area of migration and asylum with DG DEVCO's measures to strengthen institutions and support democratic processes, avoiding duplication and ensuring coherence.

4.7. The EESC considers it necessary to monitor more closely the obligation to cooperate and establish coordination mechanisms with the authorities managing the ESF+ and the ERDF in each Member State in order to promote coordination and mainstreaming and explore how to apply them when they are also in the hands of sub-national authorities.

4.8. The AMF needs to bring added value to the efforts to strengthen the Common European Asylum System, the ability of Member States to deal with persons in need of international protection, the promotion of the use of legal channels to enter the EU territory and the support for the integration of regular third-country nationals.

4.9. In terms of integration, the distribution key only takes into account the flows of arrivals per year and the total percentages of foreign population, without using any qualitative indicator which could also serve to better identify the specific needs of the Member States. It is necessary to determine the objectives more precisely in this respect, and to establish indicators ⁽⁹⁾ to continuously assess the success of the AMF's contribution in these areas.

⁽⁷⁾ April 2014 saw the adoption of Regulation (EU) No 516/2014, establishing a specific EU funding programme on migration and asylum for the period 2014-2020, with the aim of contributing, by means of financial assistance, to the efficient management of migration flows and to the implementation and development of a common EU approach to asylum and migration. The AMIF had four aims: (1) to strengthen the establishment of the Common European Asylum System (CEAS); (2) to support legal migration to the Member States in accordance with their economic and social needs, and promote the effective integration of third-country nationals; (3) to enhance fair and effective return strategies aimed at combating irregular migration; and (4) to enhance solidarity and responsibility-sharing between the Member States, in particular towards those most affected by migration and asylum flows.

⁽⁸⁾ OJ C 303, 19.8.2016, p. 109.

⁽⁹⁾ OECD/EU (2015) *Indicators of Immigrant Integration 2015* (the 'Zaragoza indicators').

4.10. It is vital to guarantee the mid-term and retrospective evaluations of the AMF and to introduce flexible mechanisms that make it possible to implement corrections in the actions evaluated. The EESC considers it necessary to combine impact and results assessments, particularly for actions that may be implemented by different administrative levels in each Member State.

4.11. Reducing the incentives for irregular migration through a policy on return and readmission is not straightforward. The Committee deems it essential to have a return and readmission policy that is efficient and that guarantees the human rights of those concerned, and stresses the need to improve the assessment of these policies and their real impact in reducing irregular flows.

4.12. Likewise, it is essential to stress the need to tackle irregular employment, especially of irregular migrants or in cases of abuse and labour exploitation. The EESC strongly welcomes the fact that the AMF can serve to finance measures aimed at counteracting the incentives to irregular migration, including irregular employment, which can act as a pull factor for irregular flows, leading to unfair competition between companies and creating a space in which rights are violated⁽¹⁰⁾.

4.13. The Committee warmly welcomes the allocation of resources to the Union Resettlement (and Humanitarian Admission) Framework. It is hoped that the targeted Union resettlement scheme will turn this commitment into a reality that is effectively developed by the Member States. The EESC has previously voiced its support for a targeted Union resettlement scheme that would turn this initiative into a reality that is effectively developed by the Member States, with financial incentives for the most engaged Member States.

4.14. The instrument for financial support for border management and visas reaffirms the willingness to contribute to ensuring the internal security of the European Union while fully respecting fundamental rights, but it is to be regretted that it does not specifically mention the protection of these rights in border areas, nor in relation to non-EU nationals.

4.15. The EESC welcomes the fact that the instrument allows the Member States to implement projects with a third country or in the territory of that country, following prior consultation of the Commission. It considers that more information is needed on the requirements of such consultation (or notification of the information), laying down clear criteria that should also include the human rights situation in the country of destination. This is crucial, since actions with a third country may include actions such as monitoring, detection, identification, tracking, prevention and interception of unauthorised border crossings.

4.16. The Committee regrets that the Regulation systematically equates the fight against irregular migration with the fight against cross-border crime, without distinguishing the spurious objectives of the second from those of the first.

4.17. With regard to border management, it is disappointing that security continues to be seen as a basically 'military' matter, whereas the Global Strategy for the European Union's Foreign and Security Policy indicates that the EU will foster human security through an integrated approach. This entails action that seeks to reduce poverty and inequality, promote good governance and human rights, provide development aid and tackle the underlying causes of conflict and insecurity, among other aspects.

4.18. The Committee is pleased that note is taken of the fact that the instruments's objective is also to contribute to protecting and saving the lives of migrants, and that the Member States are reminded that sea border surveillance includes not only security and border control, but also search and rescue operations at sea.

Brussels, 17 October 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽¹⁰⁾ See adopted opinions OJ C 204, 9.8.2008, p. 70, and OJ C 75, 10.3.2017, p. 81.