



15.11.2022

## NOTICE TO MEMBERS

**Subject: Petition No 0655/2020 by Giorgia Jana Pintus (Italian), on behalf of Associazione Ricreativa e Culturale Italiana (ARCI), Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), and Global Legal Action Network (GLAN), on mismanagement and misuse of EU funds by the EUTFA's programme of support to the integrated border management in Libya**

### 1. Summary of petition

The petitioner denounces the alleged misuse and mismanagement of EU funds by the European Commission's EU Emergency Trust Fund for Africa (EUTFA) programme "Support to Integrated border and migration management in Libya", launched in July 2017 and funded with a total of €91.3m. In the petitioner's view, the programme is illegal for its misuse of European development funds for non-developmental objectives such as border control, and inconsistent with the permissible funding objectives for the use of European development funds as provided for in relevant EU financial legislation. Further, she alleges that the use of EU funds in the IBM programme contravenes legal requirements for the proper management of European development funds, including sound financial management principles of effectiveness, efficiency and transparency, and human rights monitoring and conditionality. The petitioner claims that the harmful impact of the programme on the rights of migrants, asylum seekers and refugees has been compounded in recent months by escalating violence in Tripoli and the spread of Covid-19. The organizations represented by the petitioner submitted a complaint to the European Court of Auditors on 27 April 2020, calling on it to launch an audit into the programme for the misuse of EU funds. The petitioner attaches a statement by a group of thirteen NGOs, released alongside the complaint submission, calling on the EU to review and reform its cooperation with Libya

### 2. Admissibility

Declared admissible on 28 September 2020. Information requested from Commission under

Rule 227(6).

**3. Commission reply**, received on 21 December 2020

The Commission strongly refutes the positions outlined in the petition and, in particular, the suggestion that there has been any misuse or mismanagement of EU funds under the Support to Integrated Border and Migration Management in Libya programme, financed by the North of Africa window of the EU Emergency Trust Fund for Africa (EUTF).

First, the financial volume of the programme is not EUR 91.3 million as assumed by the petitioner. The volume of the programme's first phase is EUR 42.2 million. While originally EUR 45 million were committed under the second phase (making a total of EUR 87.2 million), this envelope was reduced by EUR 30 million following a decision of the Operational Committee of the EUTF North of Africa window in July 2020 to devote EUR 30 million to health action in Libya in the face of the COVID-19 pandemic. The remaining EUR 15 million have not yet been contracted. The total funding for border management activities in Libya is thus significantly lower than mentioned in the petition.

The funds in question are drawn from contributions to the North of Africa window, including funds from the European Neighbourhood Instrument (ENI), the Development and Co-operation Instrument (DCI), the Asylum, Migration and Integration Fund (AMIF), and Member States' contributions. These funds are underpinned by different financial rules, and not all are linked to Official Development Assistance (ODA). While the Commission considers that activities under the EUTF are ODA compliant, it should be noted that EUR 110 million of the contributions to the North of Africa window of the EUTF come from a source, AMIF, which is not governed by ODA rules.

The Commission therefore refutes the allegation that the use of funds is in any way "illegal", and that activities have been outside "permissible funding objectives" or constitute a "misuse of development funds".

The petitioner should also note that in 2018 the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD) has launched the DAC purpose code 15190, which describes ODA eligibility criteria for migration management activities, including border management. Anything falling under DAC purpose code 15190 is thus by definition development funding. The Commission firmly believes that this covers support – in the form of equipment delivery and trainings – to the relevant Libyan authorities, whose main objective is to improve their capacities to execute Search and Rescue (SAR) at sea operations.

Since 2017, the EU has provided support to increase the operational capacity of the Libyan Coast Guard and Port Security (LCGPS), which falls under the Libyan Ministry of Defence, and the General Administration for Coastal Security (GACS), which falls under the Libyan Ministry of Interior. The objective of this support is to prevent loss of life in the Mediterranean and to crack down on migrant smuggling and human trafficking networks. Only in 2020 (as of 23 November), 11,765 people have been rescued at sea by the LCGPS and the GACS (10,169 by the LCGPS alone).

The Commission therefore does not accept the assumption that the impact of the programme in question is "harmful". On the contrary, the programme is designed to reduce the risks to

migrants and save lives at sea, in line with the international legal obligations of the Union. Saving lives is a humanitarian imperative.

The petition mentions the additional dangers to migrants from the ongoing conflict and the COVID-19 pandemic. The Commission has worked wherever possible to protect migrants, and has stepped up protection activities in 2020, in the light of the pandemic as noted above. The work on border management that is the subject of this petition, goes hand in hand with activities under the North of Africa window of the EUTF on protection (EUR 237.3 million) and community stabilisation work (EUR 160.8 million), which represent together the overwhelming majority of EUTF funding for Libya (total EUR 455 million).

The EUTF follows the same principles of sound financial management based on effectiveness, efficiency and transparency as any other EU-funded programme. Programmes are subject to *ex ante* scrutiny by Member States and the governments of the EU's partner countries represented in the Operational Committee of the North of Africa window.

The Commission conducts regular monitoring of its projects under the EUTF, including through the reports of its implementing partners and specific results-oriented monitoring exercises. In addition, given the particular challenges of the Libyan context, the Commission has put in place third party monitoring of operations in Libya under the EUTF, including with particular attention to ensuring respect of the "do no harm" principle. It should be noted that such a third party monitoring of "do no harm" compliance is rather unique.

Finally, the Commission urges the petitioner not to confuse cause and effect. Many migrants and refugees are extremely vulnerable and live in precarious situations in Libya. This is the result of almost one decade of violent conflict, including widespread and well-recorded human rights violations, in particular against migrants and refugees in the country. However, it is not the result of activities implemented under the EUTF for Africa, the aim of which is to prevent lives lost at sea, alleviate human suffering, and provide basic services to the most vulnerable.

#### **4. Commission reply (REV), received on 15 November 2022**

The Commission would like to note that the financial volume of the programme is not EUR 91.3 million as mentioned by the petitioner based on the following explanations. The volume of the programme's first phase is EUR 42.2 million. While originally EUR 45 million were committed under the second phase (making a total of EUR 87.2 million), this envelope was reduced by EUR 30 million following a decision of the Operational Committee of the EU Emergency Trust Fund for Africa (EUTF) North of Africa window in July 2020, to devote EUR 30 million to health action in Libya in the face of the COVID-19 pandemic. The remaining EUR 15 million have not yet been contracted. The total funding for border management activities in Libya is thus significantly lower than mentioned in the petition.

The funds in question are drawn from contributions to the North of Africa window, including funds from the European Neighbourhood Instrument (ENI), the Development and Co-operation Instrument (DCI), the Asylum, Migration and Integration Fund (AMIF), and EU Member States' contributions. These funds are underpinned by different financial rules, and not all are linked to Official Development Assistance (ODA). While the European Commission considers that activities under the EUTF are ODA compliant, it should be noted that EUR 115 million of the contributions to the North of Africa window of the EUTF come

from a source, AMIF, which is not governed by ODA rules.

The Commission cannot accept the allegation that the use of funds is in any way ‘illegal’, and that activities have been outside ‘permissible funding objectives’. Similarly, the Commission cannot accept that the use of funds constitutes a ‘misuse of development funds’.

The Commission would also like to raise to the attention of the petitioner that in 2018 the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD) has launched the DAC purpose code 15190, which describes ODA eligibility criteria for migration management activities, including border management. Anything falling under DAC purpose code 15190 is thus by definition development funding. The Commission firmly believes that this covers support – in the form of equipment delivery and trainings – to the relevant Libyan authorities, whose main objective is to improve their capacities to execute Search and Rescue (SAR) at sea operations.

Since 2017, the EU has provided support to increase the operational capacity of the Libyan Coast Guard and Port Security (LCGPS), which falls under the Libyan Ministry of Defence, and the General Administration for Coastal Security (GACS), which falls under the Libyan Ministry of Interior. The objective of this support is to prevent loss of life in the Mediterranean and to crack down on migrant smuggling and human trafficking networks.

According to UNHCR, as of 8 October 2021, a total of 25,823 refugees and migrants have been reported as rescued by the LCGPS, and for the first time since 2014, the number of people dead and missing at sea has been steadily below 1,500 throughout both 2019, 2020 and 2021 so far.

It is the strong belief of the Commission that the programme is designed to reduce the risks to migrants and save lives at sea. Saving lives is a humanitarian imperative.

The petition mentions the additional dangers to migrants from the ongoing conflict and the COVID-19 pandemic. The Commission has worked wherever possible to protect migrants, and has stepped up protection activities in 2020, in the light of the pandemic as noted above. The work on border management that is the subject of this petition, goes hand in hand with activities under the North of Africa window of the EUTF on protection (EUR 237.3 million) and community stabilisation work (EUR 160.8 million), which represent together the overwhelming majority of EUTF funding for Libya (total EUR 455 million).

The EUTF follows the same principles of sound financial management based on effectiveness, efficiency and transparency as any other EU-funded programmes. Programmes are subject to *ex ante* scrutiny by EU Member States and the governments of our partner countries represented in the Operational Committee of the North of Africa window.

The Commission conducts regular monitoring of its projects under the EUTF, including through the reports of its implementing partners and specific results-oriented monitoring exercises. In addition, given the particular challenges of the Libyan context, the Commission has put in place third party monitoring of operations in Libya under the EUTF, including with a particular attention to ensuring respect of the ‘do no harm’ principle. It should be noted that such a third party monitoring of do no harm compliance is rather unique.

Finally, the Commission urges the petitioner not to confuse cause and effect. Many migrants

and refugees are extremely vulnerable and live under precarious situations in Libya. This is the result of almost one decade of violent conflict, including widespread and well-recorded human rights violations, in particular against the migrants and refugees in the country. However, it is not result of activities implemented under the EUTF for Africa, whose aim is to prevent lives lost at sea, alleviate human suffering, and provide basic services to the most vulnerable.

### Conclusion

The Commission strongly refutes the positions outlined in the petition and, in particular, the suggestion that there has been any misuse or mismanagement of EU funds under the Support to Integrated Border and Migration Management in Libya programme, financed by the North of Africa window of the EUTF.