

BRIEFING NOTE No. 107

Governing a new broad instrument for EU external action: THE INS AND OUTS OF THE INSTITUTIONAL POWER STRUGGLE

MFF

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SUMMARY

In this briefing note, we set the scene for the institutional battle over the governance of the proposed €89.2 billion Neighbourhood, Development, International Cooperation Instrument (NDICI). We identify a number of thorny issues to look out for in the upcoming negotiations between the Council of the European Union, the European Parliament and the European Commission.

These three institutions have their own interests, which they will seek to advance to maintain – and even enhance their influence over the instrument. Yet, in doing so they must not lose sight of the bigger picture and the acknowledged need for a more strategic, coherent and responsive EU external action.

A number of trade-offs will be needed to find the right balance between a more interest-driven and flexible instrument on one hand, and enhanced transparency and accountability on the other. This will mean:

- clarifying the role of the European Parliament in shaping policies,
- creating mechanisms for the strategic steering of the instrument and an appropriate forum to involve the member states,
- giving a stronger role to the European External Action Service in the overall coordination of the instrument, and
- specifying the criteria and guarantees for tapping into the flexibility cushion.

Moving forward, a number of considerations should be kept in mind for the future governance setup of the NDICI:

- avoiding creating additional processes, but building on and improving what is already in place,
- fostering smoother communication between external affairs and foreign policy actors that the NDICI aims to bring together,
- promoting informal mechanisms too, beyond the purely legal/procedural regulations.

Introduction

The governance of the NDICI is about how the EU institutions will exercise their respective powers to steer, manage and scrutinise the conduct of European external action. While the governance arrangements of the NDICI will largely build on existing mechanisms and legal procedures, the very nature and unprecedented scope of the new instrument implies certain necessary adjustments, notably in terms of strategic steering and oversight. The way in which the instrument is managed and governed in Brussels will shape the overall coherence and flexibility of EU external action. Yet, the key choices regarding the implementation of the NDICI will essentially happen 'on the ground' through programming.¹ The latter is an essential decision-making process through which the Commission together with the European External Action Service (EEAS), the partner countries and regions define development assistance strategies, priorities and funding allocations. While programming was traditionally confined to neighbourhood and development assistance strategies, it is now extended to EU external relations, globally.

The governance of the newly proposed NDICI relates to broader inter-institutional power dynamics on the control and influence over the use of EU financial resources (including but not only for EU external action). As such, the debate on the governance of the NDICI also touches upon the institutional checks and balances in place, and how they can be improved. These power battles have already been a major stumbling block in previous Multiannual Financial Framework (MFF) negotiations and will certainly remain a sticking point in the upcoming negotiations.

This paper is designed to inform those following the discussion² to assist in understanding the interests and stakes at play in this dossier that is both political and highly technical. The paper is divided in three sections. The first frames the issue of governance in the broader NDICI proposal and its stated objectives. The second outlines the interests of the key institutional players (European Commission, EU member states/Council and the European Parliament) with regard to the governance of the NDICI. The third part reflects on some of the most delicate points in the current negotiations where these players are yet to find a common ground.

1. Framing the issue

The NDICI proposal³ brings about a major overhaul of the EU's financial architecture for external action. It proposes an increase in available resources in a broad instrument proposed at €89.2 billion and reflects the EU's ambition for a more political and interest-driven external action agenda while respecting the EU's development agenda (based on principles like ownership and predictability).⁴ There are four specific drivers behind this ambition:

- More strategic external action: this requires stronger political steering to make EU external action more policy- and interest-driven rather than instrument-driven;
- More coherent external action: this requires a holistic approach to EU external action, making connections between its various dimensions (e.g. development cooperation; European neighbourhood policy; etc.), and linking them with internal EU policy areas;
- More responsive external action: this requires enhanced capacity to react swiftly to new challenges and unforeseen circumstances as well as the possibility to make use of diverse delivery methods;

¹ See ECDPM discussion paper 235 'How to spend €89.2 billion: Early developments in international cooperation programming', November 2018

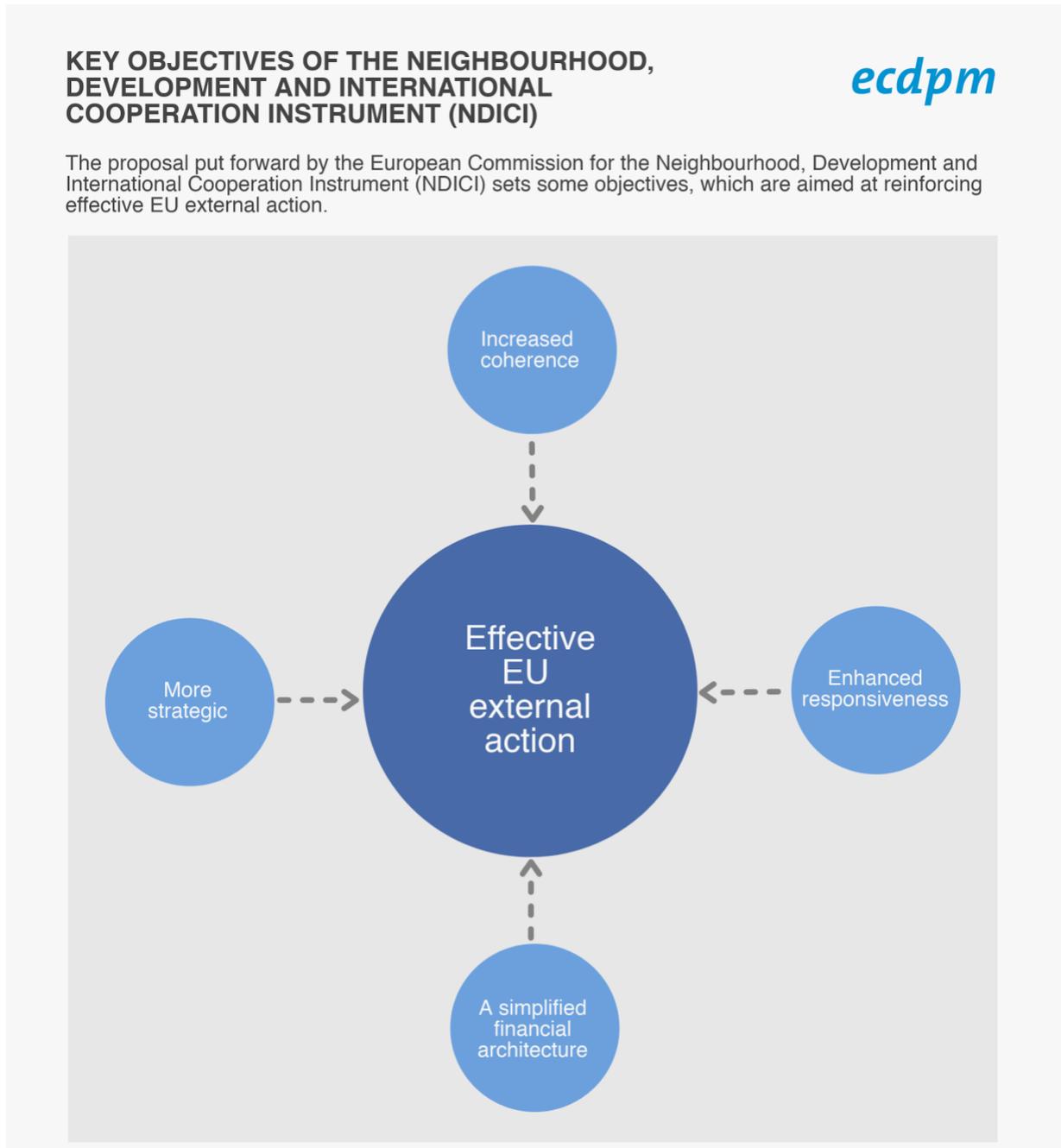
² For wider analysis of EU budget proposals and negotiations or the EU programming process see ECDPM's other publications at: <https://ecdpm.org/dossiers/multiannual-financial-framework-mff/>

³ COM(2018) 460, 14 June 2018.

⁴ See ECDPM Briefing Note 104, Aiming high or falling short? A brief analysis of the proposed future EU budget for external action, September 2018.

- Streamlined external action: this requires the simplifying of administrative and financial procedures in the overall architecture of the instrument.

These ambitious drivers call for an equally ambitious governance system and will require some inter-institutional adaptations.



The Commission's NDICI proposal is currently being discussed in the Council and the European Parliament where it was received with mixed reactions. It has met opposition from some member states and the Members of the European Parliament (MEPs) on a number of contentious issues which will largely determine the viability of the proposed instrument.⁵

⁵ See ECDPM blog, Breaking or making the Commission's ambition to streamline EU external action, April 2018.

The main sticking point concerns the overall composition and structure of the instrument, and particularly the question of which current instruments or programmes should be included and which should be left out of the NDICI.⁶ A number of stakeholders consider that maintaining separate instruments - notably the European Development Fund (EDF), the European Neighbourhood Instrument (ENI), the Instrument contributing to Stability and Peace (IcSP), and the European Instrument for Democracy and Human Rights (EIDHR) - would better protect funding and preserve political visibility for specific policy priorities, in particular thematic or geographic areas. Yet, preserving too many separate instruments risks undermining the logic of simplification.

At the same time, the need to limit the fragmentation of instruments, to be more responsive as well as to ensure strategic coherence of EU external action, has been largely acknowledged by all EU institutions and member states individually. Yet, there are still strong divergences on whether the creation of a broad instrument for EU external action is the best way forward.

In addition, the survival of the proposal also hinges on how the NDICI, with its unprecedented scope, will be governed. The governance of the NDICI will revolve around three main dimensions or stages noted below.

a. Ex ante strategic steering

The first element of governance relates to upstream policy and political guidance to orient the implementation of the instrument and to set targets *ex ante* at the overall strategic level. Given the general policy objectives of the NDICI, which address different but complementary logics of EU external action (i.e. to promote development cooperation, action in the neighbourhood, global action and EU interests), strategic steering is essential to ensure the consistency and coherence of EU engagement and cooperation with partner countries.

In doing so, the right balance must be preserved between the predictability and long-term vision of EU development and neighbourhood cooperation, on the one hand, and the needed flexibility to adapt to a volatile global environment and to address new EU strategic priorities, on the other. As to the long-term vision, the policy framework guiding EU external action consists of a wide variety of country-level, regional and thematic policies. On the basis of this myriad of policies, priorities must be chosen. In particular, upstream choices need to guide the EU's priority areas for its international cooperation in each region and country - in line with its political priorities. Yet, formulating upstream policy choices at the initial policy stage will not always be sufficient. With changing circumstances or new priorities, initial choices must sometimes be re-adjusted during the actual implementation of the instrument over its seven-year lifecycle. This is what is meant with *ex ante* strategic steering between the policy formulation and implementation phase. How exactly the strategic steering of the NDICI will be realised in the policy-to-implementation period, and by whom, is largely left unanswered.

b. Implementation decision

Where uniform conditions for implementation of EU policies are necessary (to avoid dispersed practices), the Commission and member states exercise implementing powers together. For such cases, the so-called comitology procedure allows member states to control how the Commission implements EU regulations. Comitology is exercised through committees formed by representatives of member states and chaired by

⁶ The proposed instruments to be merged are: the Development Cooperation Instrument (DCI), the European Neighbourhood Instrument (ENI), the Partnership Instrument for Cooperation with Third Countries (PI), the European Instrument for Democracy and Human Rights (EIDHR), the Instrument contributing to Stability and Peace (IcSP), the European Fund for Sustainable Development (EFSD), the External Lending Mandate (ELM), the Guarantee Fund for External Action, and the extra-budgetary European Development Fund (EDF), including the EDF's Africa, Caribbean and Pacific countries (ACP) investment facility.

the Commission, and are in charge of scrutinising the proposed implementing acts. This allows member states to approve, by qualified majority, all specific funding decisions taken by the Commission through implementing acts. The European Parliament, however, has very limited scrutiny rights in the comitology procedure.

Until now, each External Financing Instrument (EFI) has had its own dedicated committee. Reflecting the merging of the current instruments, the Commission is proposing to establish a single 'NDICI Committee'. This Committee will be in charge of controlling how the Commission implements the instrument, and of "delivering an opinion on multiannual programming documents and annual work programmes".

c. Ex post scrutiny

The crux of the European Parliament's treaty-based powers lies in carrying out its scrutiny and oversight function over external assistance financed by the EU budget (and hence excluding activities funded by the large off-budget EDF). Through its scrutiny powers, the Parliament examines annually the implementation of the budget by the Commission and can grant, postpone or refuse to give its final approval, known as the discharge procedure. Through the incorporation of the EDF in the NDICI, the scope of the Parliament's scrutiny would be significantly extended both in geographical and budgetary terms. This is something the European Parliament has long been calling for.

To enable the Parliament to practice its scrutiny rights, the Commission must provide it with all necessary information with regard to budget implementation. The Parliament can request more evidence from the Commission regarding the execution of expenditure, including for external policy, and can postpone the discharge if it has concerns about how the Commission manages the budget. The Commission has to take measures, without delay, to remove any obstacles to the discharge decision. The discharge is one of the instruments that can be used by the Parliament to control the way the EU budget is spent.⁷

2. Concerns and interests at stake in the institutional battlefield

This section addresses the concerns and interests of key players in relation to the proposed instrument. Each of the key EU stakeholders (the Commission, the Parliament, and the member states) has concerns and interests regarding their respective role in the governance of the NDICI.

In its proposal, the Commission preserved the current inter-institutional balance and division of labour. The draft NDICI regulation essentially builds on and replicates the governance and oversight mechanisms that currently apply to the existing EFIs. No new specific governance arrangements are introduced, and some current instrument-specific arrangements⁸ have not been reproduced to the same level of detail or have

⁷ The refusal or postponing of the decision to grant discharge does not imply legal sanctions. The discharge decision, however, can be used as a political tool. For instance, in 1998, the Parliament's refusal to grant discharge and the related accusations of the Commission's mismanagement of the budget resulted in the resignation of a block of Commissioners, which ultimately led to the fall of the Santer Commission. (See the European Parliamentary Research Service Study on Parliamentary scrutiny of the European Commission: implementation of the Treaty provisions, 2018, p. 60-61).

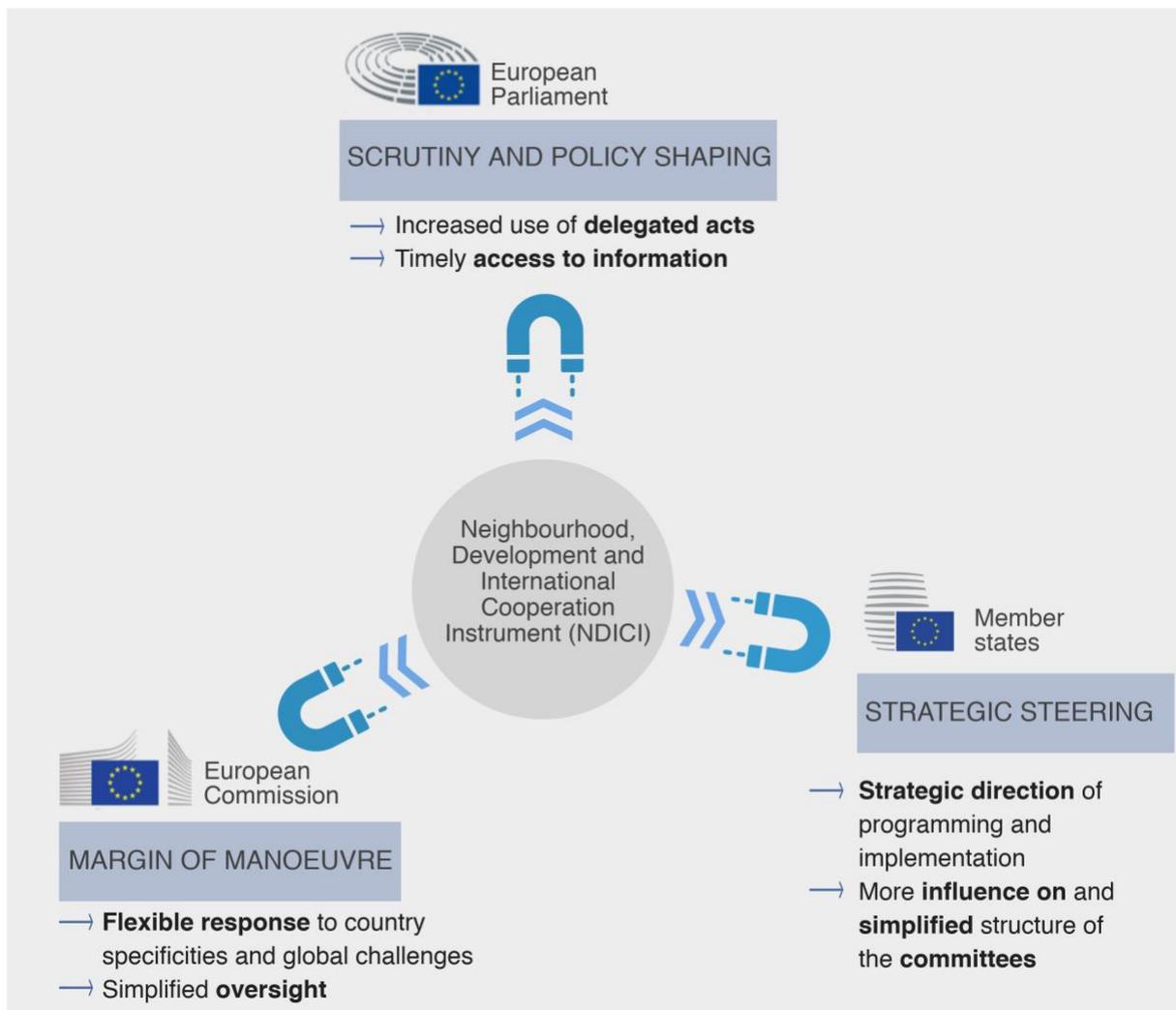
⁸ Some of the current EFIs have more specific wording on governance arrangements, especially as they relate to the rights of the European Parliament. For instance, some existing provisions grant the Parliament a right to be informed in the programming process (DCI Regulation, Art. 10 (4)); to hold regular *and frequent* exchanges of views, to be given access to documents in order to exercise scrutiny in an informed manner and to have their views duly taken into consideration while taking measures under the regulation (EIDHR Regulation, preamble (24), Art. 3(3) and 9; and IcSP Regulation preamble (14) and Art. 2(2)); and to have the Commission present multi-annual joint operational programmes (based on the programming documents) within one month of their adoption (ENI Regulation, Art. 10 (4)).

been left out altogether. This deliberate choice to streamline existing mechanisms and make some “legislative economy” in the draft proposal also leaves the space for key EU players to use the negotiations as an opportunity to further specify the relevant provisions (in the regulation itself as well as beyond it) with a view to maintaining - and even enhancing - their respective level of influence over the instrument.

MAIN INTERESTS OF THE EU INSTITUTIONS FOR THE GOVERNANCE OF THE NDICI

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The three key actors have competing interests for the governance of the proposed instrument. What do they exactly wish for?



2.1. Commission: more room of manoeuvre

The Commission’s main concern is to be able to conduct a more agile and coherent external policy. As the initiator of the NDICI proposal, it has sought to simplify the management and governance of the instrument and to give itself sufficient leeway to respond to all priorities in a rapid and flexible manner. The Commission intends to achieve this in the following ways: including the possibility to use resources from the unallocated cushion for emerging challenges and priorities (€10.2 billion); importing from the EDF the multiannuality principle (which allows carrying over unused funds across years and the allocation of

uncommitted funds to different priorities from the original ones); increasing thresholds under which small funding decisions can be taken without the approval of member states through comitology.⁹

The Commission is also keen to have a simplified oversight system that would allow the relevant institutions to have a better, more comprehensive view of EU external action. Instead of focusing on multiple programming processes, debates would be more focused on political objectives and engagement with external partners. At the same time, in order to reassure the Council and the Parliament, the Commission stresses that simplification does not mean less scrutiny and that the inter-institutional balance would be fully preserved, including through the standard comitology procedure.¹⁰

2.2. European Parliament: enhanced policy shaping and scrutiny powers

The NDICI proposal provides the European Parliament a general right to have regular exchanges with the Commission (Art. 8), which allows for discussion between the two institutions on policy and implementation of the instrument. Yet, the Parliament has recently underlined the need for a stronger role at strategic level and in secondary policy choices, namely in programming.¹¹ In fact, the Committee for Foreign Affairs (AFET) and the Committee for Development (DEVE) have repeatedly requested that the European Parliament be consulted in the programming process and in the adoption of multi-annual programming documents. The Parliament argues that, as a co-legislator, it should play a part in the elaboration of programmes¹² and that both co-legislators should be equally involved at the strategic level.¹³ To this end, it wants to bring programming documents under its scrutiny competence and have them adopted as ‘delegated acts’¹⁴ (instead of implementing acts¹⁵ which they are currently). Furthermore, in respect to the proposed instrument, AFET and DEVE seek to not only have multiannual programming done by delegated acts, but also to eliminate the use of implementing acts and comitology procedure in this respect.¹⁶ This would significantly level up the powers of the Parliament in that area. Yet, this push for more delegated acts

⁹ The thresholds correspond to those currently in place in the Common Implementation Regulation (Regulation (EU) No 236/2014, art. 2.3). But as compared to what is in place for the implementation of the 11th EDF Regulation (art. 9.4), thresholds allowing for deviating from the committee procedure in the NDICI proposal have been raised.

¹⁰ The standard procedure applicable to EFIs, the so-called examination procedure, requires the committee of national representatives to issue a positive opinion by qualified majority on implementing acts proposed by the Commission. On the basis of the proposal, the examination procedure will continue to apply for the NDICI. Within the framework of this standard procedure, more specific rules of procedure could be elaborated for the NDICI Committee.

¹¹ European Parliament, Joint AFET/DEVE Committee Draft Report on the proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument, November 2018, explanatory statement, p. 201.

¹² European Parliament Committee on Budgets - Draft Interim Report of 26 September 2018 on the proposal for a Council regulation on the Multiannual Financial Framework 2021-2027, para 28. The EP has stated that: “*measures such as objectives and priorities, financial allocations in broad terms, eligibility, selection and award criteria, conditions, definitions, and calculation methods can entail important policy choices and should therefore be included in the basic act or, failing that, be adopted by delegated acts*”. Consequently, the Parliament considers that, in this context, multiannual and/or annual work programmes should in general be adopted by delegated acts.

¹³ European Parliament, Joint AFET/DEVE Committee Draft Report on the proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument, November 2018, explanatory statement, p. 201-202.

¹⁴ Delegated acts are non-legislative acts of general application through which the Commission may supplement or amend certain non-essential elements of a basic legal act (see Article 290 of the Treaty on the Functioning of the European Union). Both the Council and the European Parliament may revoke the delegation or express objections to the delegated act. Delegated acts may enter into force only if no objection has been raised by the Council or the European Parliament within the time limit set in the basic act.

¹⁵ Implementing acts are implementation measures, whereas delegated acts allow amending, supplementing, or deleting non-essential elements of the basic legislative act. The European Parliament has limited scrutiny rights in relation to implementing acts. It can only receive information on proposed draft acts, and control that the Commission does not exceed its implementing powers.

¹⁶ European Parliament, Joint AFET/DEVE Committee Draft Report on the proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument, November 2018. See particularly the explanatory statement, p. 201-202.

is unlikely to be accepted and will be strongly opposed again by both the Commission and the Council (see box below).

In the previous MFF negotiations, the discussion around the delegated acts had already been one of the main contentious issues. A compromise solution was found in the late hours of the negotiations with the institutions accepting the use of delegated acts as a measure to revise certain details of the annexes of the EFI regulations (e.g. DCI, ENI, EIDHR, PI). In particular, delegated acts can be used to supplement or amend areas of cooperation (e.g. referred to in the Annexes of the DCI) and certain indicative financial allocations¹⁷ as well as the list of thematic priorities for Union support.¹⁸ The NDICI proposal envisages delegated acts for areas of cooperation for geographic programmes, areas of intervention for thematic programmes, areas of intervention for rapid response actions – all of which are part of the Annexes. It no longer foresees the possibility of delegated acts for financial allocations.

The debate around the delegated acts remains legally unresolved

This has been one of the most tricky issues in the previous MFF negotiations where a hard-fought battle had opposed the European Parliament against the Commission and the Council. The European Parliament had asked that all multiannual strategy papers and multiannual indicative programmes containing the instruments' political orientations and financial allocations be treated as delegated acts.

The Parliament's argument was that any decision concerning the choice of priorities, objectives or expected results and decisions adding new criteria or requirements should be either included in the regulation itself or in turn adopted by delegated acts. In the Parliament's view, such decisions essentially modify the content of the regulation and consequently fall exclusively under the scope of delegated acts.¹⁹ However, both the Commission and the Council had refused the use of delegated acts by the European Parliament on the ground that these programming documents do not affect the substance and objectives of the regulation and do not supplement or amend non-essential elements of the regulation. Rather, programming documents were to be considered as implementing decisions, which should be treated according to the comitology procedure.

Whereas, in the case of delegated acts, the European Parliament has important rights to veto and/or to revoke the delegation, in the case of implementing acts, the European Parliament's rights are limited: it only has the right to receive information and to scrutinise whether the Commission stays within the limits of the implementing powers granted to it.

The delimitation between implementing acts and delegated acts has remained a contentious issue. The institutions have recognised the need for agreeing on non-binding common criteria for the application of delegated acts and implementing acts.²⁰ Such criteria are yet to be established.

While the European Parliament did not get what it initially wanted, it still managed to strengthen its scrutiny powers during the last MFF negotiations for the areas included in the annexes and amendable by delegated acts, where it can exercise a power of veto or revoke its delegation altogether.

¹⁷ The ENI Regulation and the DCI Regulation indicative financial allocations under the geographic programmes and the Global Public Goods and Challenges (GPGC) Thematic Programme.

¹⁸ The ENI Regulation.

¹⁹ European Parliament resolution of 25 February 2014 on follow-up on the delegation of legislative powers and control by member states of the Commission's exercise of implementing powers, para 1.

²⁰ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, para (28).

The compromise reached on delegated acts was accompanied by a ‘strategic dialogue’ mechanism permitting greater consultation with the European Parliament for the multiannual programming documents. The strategic dialogue is not part of the regulations per se, but attached as a unilateral declaration from the Commission, thus not giving it the same legal force as the regulation itself. Concretely, the ‘strategic dialogue’, as it has been designed for the current instruments, requires the Commission to present to the European Parliament all relevant available documents on programming indicative financial allocations, possible results as well as the choice of assistance modalities. The European Commission should also take into account the position expressed by the European Parliament on those issues.²¹ Experience of the strategic dialogue thus far has been mixed, mainly due to lack of clarity on the process, timing and scope of the exchanges between the Commission and the Parliament.

2.3. Member states: more strategic influence

Several member states are concerned by their (perceived) lack of strategic influence in the fundamental (upstream) political choices and implementation of the EFIs. The traditional comitology procedure is often viewed as a mere (downstream) rubber-stamping exercise of the Commission’s proposals, not allowing for sufficient substantive *strategic* discussions and influence on the upstream decision-making, prior to the adoption of specific actions in partner countries.

The multiplicity of committees has also caused some fatigue with member states. While a single NDICI committee may partly remedy this sentiment, there are still questions around the composition and functioning of the committee in practice. The composition and structure of the NDICI committee will need to be flexible enough in light of the overarching nature of the single instrument. The NDICI committee would indeed be composed of member states’ experts having to cover and decide upon a panoply of EU external action domains, ranging from development cooperation and migration management to human rights protection - and from Africa to the Neighbourhood and beyond to Asia and Latin America. This poses the question of the ability to move away from siloed approaches and institutional arrangements that have prevailed until now. The strategic steering of the NDICI also calls for a more comprehensive overview of EU external action, which very few actors, apart from the EEAS, currently have.

2.4. EEAS: consistent and interest-driven EU external action

While the EEAS is not an EU institution in its own right, and as such is not formally part of the inter-institutional negotiations, it nonetheless has interests regarding the governance of the NDICI. The EEAS wants to promote a holistic and strategic approach to EU external action and ensure that the NDICI is used in a more strategic and interest-driven manner. The EEAS is potentially well placed to undertake the co-leadership and inter-institutional coordination of EU external action (including the external dimension of internal policies). It seems better suited for that because of its comprehensive vision and strategic approach (cf. the 2016 Global Strategy for the EU’s Foreign and Security Policy, and the experience and expertise it has gathered since its creation). Yet, the EEAS has struggled to impose or even facilitate a unified strategic direction on the more powerful seats of EU institutional power in the European Commission and the Council. Indeed, the story of the EEAS to date has been somewhat caught between the existing powerhouses of the Commission, which controls the money, and the Council and member states, which insist on steering foreign policy. There is still some reluctance among the member states and the Commission to give more power to the EEAS and HR/VP.

²¹ Declaration by the European Commission on the strategic dialogue with the European Parliament, Annexed to, for instance, the DCI and ENI Regulations.

3. Reconciling positions to accommodate institutional adaptations

Amidst the ongoing broader institutional power battles, the Commission, member states and the European Parliament are yet to find common ground on the NDICI governance. Five elements at this stage merit further consideration and clarification in view of the upcoming negotiations.

3.1. An appropriate role for the European Parliament

The European Parliament's powers were considerably strengthened with the Lisbon Treaty, including by increased parliamentary oversight over external affairs²² and regular consultations with the HR/VP.²³ Yet, the Council and the HR/VP remain ultimately responsible for the common foreign and security policy. The role of the European Parliament in this area, and of the respective committees competent for scrutinising various aspects of EU external funding, is subject to a distinct set of institutional arrangements and decision-making modes (this depends on which policy is covered by which budget line). The NDICI could potentially bring a significant shake-up to these arrangements. At the same time, the Treaty mandate and constitutional role of the European Parliament do not foresee it to have a major say on "implementation issues, such as programming docs. The increased use of delegated acts would significantly enhance the powers of the Parliament, but could also create considerable delays in the implementation of the instrument.

3.2. Strategic dialogue & information-sharing

The NDICI proposal contains no reference (yet) to the strategic dialogue between the European Commission and the European Parliament (it is 'just' recommended practice based on a Commission's unilateral political declaration and therefore has no legal force). Yet, a similar solution could be proposed this time around, and even elaborated on. As a matter of fact, the draft proposal for a renewed Inter-Institutional Agreement (IIA) on improving cooperation on budgetary matters²⁴ recognises the need for increased informal dialogue between the Commission and the Parliament on development policy issues. Should this remain in the IIA, this dialogue (be it informal) would become a binding obligation between the parties to the Agreement. There is notably scope to improve communication between institutions. One important improvement could be to ensure that the strategic dialogue takes place on a more regular basis and does not limit itself to one-off exchanges. Currently, it is foreseen at specific moments in time, namely prior to the programming, in preparing the mid-term review and before any substantial revision of the programming documents. A possibility could be to have this dialogue on an annual basis, to allow the Parliament to have a better and more regular strategic overview of the NDICI implementation. This regularity would be particularly necessary in the context of the parliamentary scrutiny of the mobilisation of the NDICI cushion. Furthermore, it will also be important to focus the dialogue on the political aspects and strategic orientations for EU cooperation with partner countries. Such a dialogue at strategic level should also include the EEAS and the HR/VP.

More complete and timely sharing of information would also help create a higher level of trust between the institutions, including prior consultation of member states ahead of major EU initiatives, more detailed explanations by the Commission on how the Parliament's observations are taken into consideration in the implementation choices.

²² See European Parliament Directorate-General for External Policies, *Shaping and controlling foreign policy, Parliamentary diplomacy and oversight, and the role of the European Parliament*, 2015, for instance, p. 24.

²³ Treaty on European Union, Article 36.

²⁴ COM(2018) 323 final. Article 23 of the draft IIA states that: "The Commission shall establish an informal dialogue with the European Parliament on development policy issues regardless of their source of financing".

3.3. Creating a forum for strategic discussion with the member states

Recognising the need for upstream strategic steering of the instrument and for the member states to be involved in this process, a number of questions come to the fore. An important element for member states is the possibility to have regular focused discussions linked to how and why EU resources are spent.

Several instances exist at high level (e.g. Foreign Affairs Council, Meetings of EU Directors-General for Development) where the EU member states can have a say on the overall strategic steering of EU external action, including development policy. Should another forum be created for the steering of the NDICI specifically, where and when should this take place? At what level or in which forum? And how should this be organised, geographically or thematically? There are two basic options with regard to the *forum* for strategic steering.

A first option is to place the strategic steering on behalf of member states in the NDICI Committee. Should this be the case, an idea would be to have two levels of discussion within the committee: an operational one (at the technical level, for the usual business of approving the Commission's implementing acts), and a strategic one (at a more senior level, to allow for strategic discussions and steering of the NDICI). One example of such a two-tiered approach to governance can be found in the EU Trust Funds, which have both an operational and a strategic board. However, the "comitology" fatigue felt by several member states and the difficulty to mobilise the right level of expertise in committees would make this option a hard sell.

Another possibility is to place the strategic steering within the Council where political discussions already take place, albeit in a fragmented manner. The 'Ad Hoc Working Party on the Neighbourhood, Development and International Cooperation Instrument' (MFF NDICI) was created to examine the legislative proposals and come up with an agreed Council position in this regard. This Working Party could potentially become, if transformed in a permanent working party, an appropriate body for future political and strategic discussions on the NDICI.

3.4. Coordination of NDICI at the EEAS

If the overall aim of the NDICI is indeed to react more coherently and flexibly to global challenges, pressing development concerns and EU's own interest, its overall *coordination* could be centralised under the responsibility of the HR/VP and the EEAS. The *management* of the instrument would continue to be led by the Commission and the services in which the expertise has been amassed over the last decades. The EEAS can coordinate, but not manage the NDICI, as this is a Commission prerogative. The Commission has always fought hard to keep management away from the EEAS and to ensure that there is no slippage in this area. As the coordinator, the EEAS would thus rely on existing Commission structures unless the creation of the NDICI is accompanied by a restructuring of the Commission itself. This seems rather unlikely at this stage (but with a new Commission due at the end of 2019 some reorganisation could be envisaged).

The EEAS is currently doing significant homework in the programming process to place itself more at the heart of the strategic discussion.²⁵ It is for instance preparing so-called "strategic framework documents" at country level to define the EU's interests in a given country or region. The strategic framework documents seek to integrate the different strands of EU external action (climate, energy, migration, security, economy, development), and may clarify what the EU intends to achieve, in the field of development assistance and

²⁵ See ECDPM discussion paper 235, How to spend 89.2 billion early developments in international cooperation programming, November 2018.

beyond that, in a given country.²⁶ The active involvement of EU member states in that exercise is necessary at partner country-level, especially in the context of EU joint programming.

3.5. Tapping into the flexibility cushion

To increase the EU's response capacity and flexibility in the case of unforeseen circumstances, the cushion allows moving funds between the geographic, thematic and rapid response pillars of the NDICI, and, within each pillar, between sections. But which procedures - be they flexible- are set up for that purpose? Besides the maximum duration for exceptional assistance measures of 30 months, the draft regulation is largely silent on such questions. Detailing basic criteria from the outset is essential to justify and control how, when and why the EU can tap into the cushion.

The Parliament has stressed that enhanced flexibility cannot come at the expense of long-term policy objectives and reduced possibilities for the European Parliament to exercise its political steering and scrutiny rights".²⁷ Member states also stress that strategic steering must also apply to the use of the cushion. Yet, developing criteria for using the reserve should not constrain its primary purpose to be used as a flexibility mechanism. Attempts to increasingly 'programme' or confine the reserve would hamper its ability to respond swiftly to new challenges, and would thus contradict the very purpose of the reserve - and, by extension, the logic of flexibility that informed the proposed instrument in the first place.

4. A way forward for the upcoming negotiations

The MFF negotiations offer a good opportunity to improve and fine-tune the governance mechanisms and procedures that would apply to the NDICI. In doing so, a number of considerations should be kept in mind.

First, the future NDICI governance setup should usefully build on what is already in place and seek to improve existing mechanisms where needed, rather than reinventing the wheel and creating additional layers or processes. Beyond the necessary improvement of current inter-institutional mechanisms that apply to the EFIs (such as comitology and strategic dialogue), there are a number of practices and processes in other policy areas that could also provide useful inspiration to improve the quality and regularity of exchanges. Among these are often cited the successful inter-institutional cooperation between the Parliament, EEAS, Commission and member states in the context of EU Election Observation Missions, or the regular exchange of views and structured dialogue between the Commissioner for Trade and the EP Committee for International Trade (INTA).

Second, the governance of the NDICI also implies homework for everyone. Institutional adaptations and new working methods are needed to break siloes and ensure better coordination between all external affairs, development, security, and foreign policy actors that the NDICI aims to bring together. The major change induced by the NDICI thus calls upon all EU institutions, as well as member states themselves, to coordinate internally with respect to EU external policy. All need to ensure that their own (inter- and intra-) institutional arrangements and working methods are fit for purpose.

- For the European Commission, this includes the Commissioners' Group on External Action (CGEA) to achieve greater coherence in EU foreign policy, as well as inter-service coordination mechanisms between the various Directorates General and Services in charge of EU external policies (DG

²⁶ See [ECDPM discussion paper 235](#), 'How to spend €89.2 billion: Early developments in international cooperation programming', November 2018.

²⁷ European Parliament, Opinion of the Committee on Foreign Affairs for the Committee on Budgets on the Interim report on MFF 2021-2027, 11 October 2018, para 7.

DEVCO, ECHO, NEAR, TRADE, Service for Foreign Policy Instruments (FPI) and other line DGs with an external dimension (DG for Climate Action (DG CLIMA), DG Migration and Home Affairs (DG HOME), etc). How the future Commission will organise itself will have in that regard a big impact on EU external action.

- At Council level, more synergies and increased cooperation could also be facilitated between relevant thematic and geographic Council working parties. Currently, thematic working parties (such as the Working Party on Development Cooperation (Codev) and African, Caribbean and Pacific (ACP) Working Party), and geographic working groups (such as the African Working Party (COAFR), Asia-Oceania Working Party (COASI) or the Working Party on Latin America and the Caribbean (COLAC)) discuss separately issues that are all relevant under the NDICI.
- Enhanced collaboration could also be encouraged between parliamentary committees. There is no doubt that, given the breadth of the instrument, AFET and DEVE will need to step up their collaboration. The increase in joint hearings and joint work by co-Rapporteurs coming from both committees is a welcomed step in this regard. A permanent working group on joint AFET-DEVE matters could be set up as a means to scrutinise the NDICI together.

Third, the governance arrangements of the NDICI should go beyond the NDICI regulation per se. Not all governance issues can nor should be solved through the NDICI regulation - and, as the case may be, should be addressed directly in the relevant texts (rather than channelled through the NDICI). The draft regulation is not a panacea for all governance-related frictions between EU stakeholders. Other regulations (e.g. on comitology and on financing) and inter-institutional agreements (e.g. on better law-making and on budgetary collaboration), as well as non-regulatory mechanisms and processes also inform the inter-institutional balance on governance. The NDICI governance will also be shaped by the broader MFF negotiations, and the inter-institutional deals concluded along the way.

Fourth, governance issues cannot and should not be addressed solely from a legal/procedural angle as this is essentially a power struggle tackling the political interests and incentives. Filling the gap between law and practice and oiling institutional wheels rely importantly on informal mechanisms too (including smooth and regular communication channels, informal relations between people and personalities, institutional internal dynamics). Such mechanisms are also indispensable to establish trust between the institutions. Opportunities for these informal channels to flourish should also be explored.

Ultimately, the governance of the NDICI will undoubtedly resonate and be shaped by the overall bargains and likely trade-offs that will occur in the broader MFF negotiations. The proposed increased budget for EU external action is not safe from cuts resulting from the overall deals in other policy areas, including for the EU cohesion and common agricultural policies. This in itself makes the necessity to 'get it right' on the governance of NDICI even more important.

Bibliography

- Council of the European Union, 2015. *Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund*, [OJ L 58, 3.3.2015, p. 17–38](#), March 2015.
- European Commission, 2018. *Proposal for a Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management*, [COM\(2018\) 323 final](#), 2 May 2018.
- European Commission, 2018. *Proposal for a Regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument*, [COM\(2018\) 460](#), 14 June 2018.
- De Groof, E. and Sayós Monràs, M. 2018. *Breaking or making the Commission’s ambition to streamline EU external action*, [ECDPM blog](#), 27 April 2018.
- European Parliament, European Parliamentary Research Service, 2018. *Parliamentary scrutiny of the European Commission: implementation of the Treaty provisions*, European Implementation Assessment, [PE 627.115](#), October 2018.
- European Parliament, Committee on Budgets, 2018. *Draft Interim Report on the proposal for a Council regulation on the Multiannual Financial Framework 2021-2027*, [2018/0166R\(APP\)](#), 26 September 2018.
- European Parliament, the Committee on Foreign Affairs (AFET) and the Committee on Development (DEVE), Joint Committee procedure, 2018. *Draft Report on the proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument*, [2018/0243\(COD\)](#), 19 November 2018.
- European Parliament, Committee on Foreign Affairs, 2018. *Opinion of the Committee on Foreign Affairs for the Committee on Budgets on the Interim report on MFF 2021-2027*, [2018/0166R\(APP\)](#), 11 October 2018.
- European Parliament, the Council and the European Commission, 2016. *Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making*, [OJ L 123, 12.5.2016](#), p. 1–14, 13 April 2016.
- European Parliament and the Council, 2014. *Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument*, [OJ L 77, 15.3.2014, p. 27–43](#), March 2014.
- European Parliament and the Council, 2014. *Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide*, [OJ L 77, 15.3.2014](#), p. 85–94, March 2014.
- European Parliament and the Council, 2014. *Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020*, [OJ L 77, 15.3.2014, p. 44–76](#), March 2014.
- European Parliament and the Council, 2014. *Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace*, [OJ L 77, 15.3.2014, p. 1–10](#), March 2014.
- European Parliament and the Council, 2014. *Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union’s instruments for financing external action*, [OJ L 77, 15.3.2014, p. 95–108](#), March 2014.
- European Parliament, Directorate-General for External Policies, 2015. *Shaping and controlling foreign policy, Parliamentary diplomacy and oversight, and the role of the European Parliament*, [PE549.045](#), July 2015.

European Parliament, 2014. *Resolution of 25 February 2014 on follow-up on the delegation of legislative powers and control by Member States of the Commission's exercise of implementing powers (2012/2323(INI))*, [P7_TA\(2014\)0127](#), 25 February 2014.

Herrero, A., with Sherriff, A., Di Ciommo, M. and Thijssen, S. 2018. *How to spend €89.2 billion: Early developments in international cooperation programming*, ECDPM [discussion paper 235](#), November 2018.

Jones, A., Di Ciommo, M., Sayós Monràs, M., Sherriff, A. and Bossuyt, J. 2018. *Aiming high or falling short? A brief analysis of the proposed future EU budget for external action*, [ECDPM briefing note No. 104](#), September 2018.

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