

## The European Peace Facility: Minimising Significant Risks in Implementation

October 2021

On 22 March 2021, the Foreign Affairs Council of the European Union (EU) adopted a Council Decision establishing a 'European Peace Facility'<sup>1</sup> (EPF).

This new funding instrument is worth up to EUR 5 billion<sup>2</sup> for the period 2021-2027 and will finance 'EU external action having military or defence implications'. The EPF merges and expands two existing EU off-budget funds: the Athena Mechanism and parts of the African Peace Facility. It brings some significant changes, in particular the possibility for the EU to provide military equipment (including weapons and ammunition) to third country armed forces and regional military operations through EPF assistance measures.

During the negotiations, the European Peacebuilding Liaison Office (EPLO) and its member organisations expressed strong reservations about the EPF and its effects on human security.<sup>3, 4</sup> Now that the EPF has been formally established, we continue to question the necessity and added value of this new instrument. We remain concerned that it could, despite its name, cause harm to civilians, exacerbate existing tensions and fuel violations of international humanitarian law (IHL) and international human rights law (IHRL) in conflict-affected settings.

This statement provides a non-exhaustive list of recommendations to the EU and EU Member States on how they could reduce the risks to civilians where the EU uses EPF assistance measures to support governments in conflict-affected places.

### Overarching recommendations:

1. Put human security at the core of each EPF assistance measure's rationale
2. Ensure the EU's risk management tools and procedures are fit for purpose
3. Ensure high levels of transparency and accountability

<sup>1</sup> Council of the EU, [Council Decision \(CFSP\) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision \(CFSP\) 2015/528 ST/5212/2021/INIT](#), 22 March 2021

<sup>2</sup> In 2018 prices.

<sup>3</sup> Human security is a people-centred approach to security, focusing attention on the security of the individual, community and society at large, rather than just state security, which focuses on the territorial integrity of the state. See also: European Commission and European External Action Service, [Joint Communication on Elements for an EU-wide strategic framework to support security sector reform](#), 5 July 2016.

<sup>4</sup> EPLO, [Letter to the Political and Security Committee \(PSC\) on the proposed 'EPF'](#), 7 January 2019; EPLO, [Letter to the PSC on the proposed 'EPF'](#), 27 February 2020. [Joint NGO letter to the European Union Foreign Affairs Council on the proposed EPF](#), May 2019; Joint Civil Society Statement: [European 'Peace' Facility: Causing harm or bringing peace?](#), November 2020; International Crisis Group, [How to Spend It: New EU Funding for African Peace and Security](#), January 2021.

## 1. Put human security at the core of each EPF assistance measure

Strengthening state security does not always bring stability nor does it automatically lead to better protection of civilians and peaceful societies. Human security, which centres the safety of individuals, is an essential concept at the heart of several EU policies such as the EU-wide Strategic Framework to support Security Sector Reform (SSR), the Integrated Approach to external conflicts and crises and the EU Strategic Approach to Women, Peace and Security (WPS). Despite the acceptance and integration of this concept in a wide range of existing policies, it is not explicitly mentioned in the Council Decision establishing the EPF. Human security – and not the security of a particular government – must be understood as a key priority and applied consistently and meaningfully in the roll-out of the EPF.

### For all EU actors this means:

- Before even considering an EPF assistance measure, the EU should develop a **broader political strategy** designed to increase human security and address the root causes of conflict in the country or region in question. This strategy should be based on thorough conflict analysis and developed in coordination with local and international actors.

### In particular, EU Member States should:

- Add an **explicit reference** to human security in the objectives of the instrument when the Council Decision establishing the EPF is reviewed (at the latest in 2024).
- Use EPF assistance measures **only as a last resort**, once it is clear that no civilian EU tools or leverage (political or financial) could achieve the EU's long-term peace and development goals in the partner country or region. A clear rationale should be elaborated for why other measures would not be appropriate. Decision-makers should also consider the anticipated carbon footprint of EPF assistance measures.
- **Exclude** the transfer of military equipment which can deliver lethal force, and equipment which can be used for torture, mistreatment or other human rights violations and harmful practices in general.
- Ensure that each Council Decision establishing an individual assistance measure:
  - explicitly aims at increasing human security in the partner country or region,
  - is justified by rigorous multi-stakeholder conflict analysis and a **robust theory of change** describing how this assistance measure will contribute positively to conflict dynamics and human security. Such a theory of change should pay particular attention to how it will make the military and security forces more accountable and respectful of the human rights and security needs and perceptions of all demographics coming under their jurisdiction, regardless of age and gender, and with particular attention to marginalised groups
- Request from the EU institutions that the perceptions, experiences of security and recommendations from the diverse men, women, boys and girls, including minorities, who are **most affected by conflict** in partner countries, shape the design, implementation and evaluation of EPF assistance measures.
- Second national **personnel with expertise on human security, IHL and IHRL** to the EU institutions involved in the implementation of the EPF.

The European External Action Service (EEAS), EU Delegations (EUDs) and, where relevant, missions under the Common Security and Defence Policy (CSDP) should:

- Guarantee that **adequate human resources** have been put in place to ensure full compliance with EU commitments to human security, IHL and IHRL in the design, implementation and review of EPF assistance, at all levels (senior and working level). Staff should have prior knowledge, training and expertise on human security, IHL and IHRL.
- Ensure EU staff regularly and meaningfully **consult a wide range of civil society actors** in the partner country or region, particularly diverse women, young people and marginalised groups, to better understand their security needs, experiences and perceptions, including patterns of inclusion and exclusion and their perceptions of state security forces and armed groups, through both formal consultation mechanisms and informal exchanges.
  - Headquarter staff should develop an overall '**Community and Civil Society Engagement Strategy for EPF assistance measures**' in the format of a staff working document or joint guidance note.
  - Managerial levels should ensure that staff members are given adequate time and capacity for the development and implementation of this Engagement Strategy.
- Ensure EU staff regularly and meaningfully consult with international partners, including relevant **regional organisations**.
- Ensure coherence with the rest of EU external action, in particular with the support provided to SSR processes and wider democratic governance programmes aimed at increasing human security and addressing the root causes of violent conflict.
  - **Systematic and ex-ante coordination** with the thematic, regional and national envelopes of the Neighbourhood and Development International Cooperation Instrument – Global Europe (**NDICI-GE**) will be crucial to ensure such coherence. Managerial levels should ensure that staff members are given adequate time and capacity for this.

## **2. Ensure the EU's risk management tools and procedures are fit for purpose**

The Council Decision establishing the EPF requires that 'conflict sensitivity and context analysis' and 'risk and impact assessment' are prepared before an assistance measure is agreed upon, and regularly updated during implementation. It is also mandatory for each Council Decision establishing an individual assistance measure to include monitoring and evaluation (M&E) arrangements. Adequately managing the risks for each EPF assistance measure will help to ensure that EU resources are optimised and spent effectively. To make the best use of these clauses, the officials in charge of EPF assistance measures must put in place rigorous analytical and risk management procedures which focus on the impact on both ordinary people (in all their diversity) and conflict and peace dynamics. Furthermore they should establish procedures to ensure that the analysis produced/gathered is translated into action and actually informs the decisions to establish (or not), suspend, adapt, continue or terminate an assistance measure. Finally, these provisions should be matched with adequate human resources or they will remain inoperable.

**For all EU actors this means:**

- Preliminary analyses cannot rely solely on previous/institutional intelligence, even for measures concerning the continuation of support provided under the African Peace Facility or complementing existing CSDP missions. A **thorough analysis and consultation process** should be carried out at the initial stages of consideration for each EPF assistance measure.
- All preliminary analyses and their subsequent updates should:
  - fully integrate political economy analyses and **gender-sensitive conflict analyses** (as per the EU Strategic Approach to WPS), i.e. looking at power dynamics between and within various groups,
  - be based on the views and knowledge of **diverse local civil society actors**,
  - specifically look at **civilian harm risks**, such as direct and indirect attacks on civilians, risks of mass atrocities, damage to physical, societal and economic infrastructure which may harm civilians, and damage to the environment and natural resources,
  - and reflect on how EPF assistance measures could affect how the EU is perceived in a given context, in particular its **ability to support mediation** and other peacebuilding activities.
- Enhance the **exchange of information** between EU Member States and EU institutions with regard to their own assessment of foreign military actors or ad hoc coalitions, including their hierarchies, command and control structures and capacities, their track record with bilateral support, as well as their assessment of the political risk and conflict situation.
- M&E efforts should look at the **impact** and coherence of EPF assistance measures **on peace and conflict dynamics** – not only at where the equipment is being used or how many members of the military have been trained. Gathering local civil society perspectives will again be crucial in this regard as they are best placed to analyse conflict dynamics over time.
- Design and M&E efforts should also take into account **climate and environmental considerations**, including the impact of the military sector and security force assistance on the environment.

In particular, EU Member States should:

- Ensure that ex-ante ‘conflict sensitivity and context analysis’ and ‘risk and impact assessment’ are also systematically carried out **for ‘urgent measures’**; and make this mandatory when the Council Decision establishing the EPF is reviewed (at the latest in 2024).
- Second national **personnel with the necessary expertise** on the relevant countries and regions, conflict analysis, conflict sensitivity, arms control and non-proliferation, gender, IHL and IHRL, protection of civilians, resilience, informal and hybrid security arrangements, election-related violence, as well as M&E in conflict-affected settings, to the EU institutions.
- Enhance the exchange of information with the EEAS and Commission, including the release of restricted, confidential and secret information pertaining to the state of third-party military actors and ad-hoc coalitions, as described above.
- **Regularly raise questions** in the EPF committee and in the Political and Security Committee, e.g. when the High Representative reports on implementation twice a year, on:

- The preliminary and updated assessments on the capacities, accountability, due diligence and track record of recipients.
  - How gender, human rights and civilian harm dimensions have been integrated in the analysis, design and monitoring of each assistance measure and at what stage.
  - Whether and how CSOs (in particular local civil society) have been consulted for the development and updating of the conflict analysis and risk assessment, and with respect to ongoing M&E.
  - The impact of each assistance measure on conflict dynamics and on the IHL and IHRL situation in the partner country or region.
- Ensure that unanimity is not required to suspend or terminate an assistance measure. Given the particular nature of EPF assistance measures, suspension should be triggered when **any** EU Member State can no longer support an assistance measure, and qualified majority voting would be required to continue with this measure.
  - As part of the decision-making process with respect to any export of any items on the EU military list under an EPF assistance measure, establish **a sub-committee** of Member State representatives of the Conventional Arms Exports subgroup (**COARM**) of the Council Working Party on Non-Proliferation and Arms Exports, that shall advise the EPF Committee on whether the proposed export would be consistent with the relevant provisions of the EU Common Position on arms export control<sup>5</sup>, the User's Guide<sup>6</sup>, the Arms Trade Treaty<sup>7</sup> and other relevant IHL.<sup>8</sup>
  - Strengthen the 'Integrated Methodological Framework for assessing and identifying the required measures and controls for assistance measures under the EPF'<sup>9</sup> to ensure that its provisions are precise, compulsory and **applied systematically** in all circumstances and not on a 'case-by-case basis'.

Managerial levels within the EEAS and in relevant EUDs and CSDP missions should:

- Ensure that EU officials responsible for the design, implementation and review of EPF assistance measures have **expertise on peace and conflict**, including conflict analysis, conflict sensitivity, political economy analysis, arms control and non-proliferation, gender mainstreaming, IHL and IHRL, protection of civilians, and monitoring and evaluation in conflict-affected settings, as well as expertise on the relevant countries and regions (including language capabilities), by:
  - **Recruiting** staff members with prior knowledge and experience;
  - **Training** staff members;
  - **Rewarding** in performance evaluations and career promotions the effective utilisation of the knowledge;
  - Increasing institutional **knowledge management** processes.

<sup>5</sup> Council of the EU, [Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, 8 December 2008 amended by Council Decision \(CFSP\) 2019/1560](#), 16 September 2019

<sup>6</sup> Council of the EU, [User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment](#), 16 September 2019

<sup>7</sup> United Nations, [The Arms Trade Treaty](#), 2 April 2013

<sup>8</sup> For a detailed account of other relevant IHL see Professor Phillippe Sands QC, Professor Andrew Clapham, Blinne Ni Ghraígh, '[LEGAL OPINION on the lawfulness of the authorisation by the UK of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia's military intervention in Yemen](#)', *Matrix Chambers*, 11 December 2015, prepared on instructions from Amnesty International UK, Oxfam and Saferworld.

<sup>9</sup> Council of the EU, [Integrated methodological framework for assessing and identifying the required measures and controls for assistance measures under the EPF](#), 18 December 2020

- Ensure that all staff members are **incentivised to report critically** on the EPF implementation in case of potential misuse or worsening of conflict dynamics, or risks thereof; and that these critical reports are conveyed to EU Member States.

EU officials in Brussels (including the EEAS division on the EPF, ISP.5) should:

- Carry-out the **analytical work in-house**, after having gathered input from civil society, to own the results of the analysis and translate it into action.
  - When parts of preliminary assessment or M&E are outsourced to contracted for-profit third parties, EU officials should pay particular attention to possible conflicts of interests and ensure that these contracted for-profit third parties consult diverse local civil society actors as part of their work.
- Further develop the technical safeguards laid out in the ‘Integrated Methodological Framework for assessing and identifying the required measures and controls for assistance measures under the EPF’<sup>10</sup>.
  - Regularly update and sharpen the technical safeguards for ‘lethal’ equipment.
  - In addition, the supply of **‘non-lethal’ equipment, training or financial support** through EPF assistance measures can also lead to misuse, diversion and civilian harm. EU officials should develop strong dedicated technical safeguards and rigorous monitoring procedures for this type of support as well.
- Develop and apply a **robust EU Human Rights Due Diligence Policy**, as per the commitment in the EU Action Plan on Human Rights and Democracy (2020-2024)<sup>11</sup>, to ensure that EPF assistance measures are in compliance with HRL and IHRL.

EUDs and CSDP missions in countries where an EPF assistance measure is implemented should:

- Increase **human resources** allocated to monitor and report on potential issues with the implementation of assistance measures, including with regard to their impact on conflict dynamics.
- Actively seek and take full account of **analyses and testimonies** from a diverse range of CSOs, especially in-country civil society actors, as part of the preliminary assessment and M&E processes.
- Ensure that M&E processes include an assessment of **people’s changing perceptions** and experiences of security before, during and after the implementation of EPF assistance measures.

### 3. Ensure high levels of transparency and accountability

Continuous transparency on the support provided through EPF assistance measures will be essential to enable oversight and accountability towards both the local populations in the partner countries and EU citizens. To balance the serious risks that will come with this new type of EU support, transparency and accountability practices that have applied thus far to the African Peace Facility or CSDP missions will not be sufficient and need to be substantially revised to be fit for

<sup>10</sup> Ibid

<sup>11</sup> Council of the EU, [EU Action Plan on Human Rights and Democracy \(2020-2024\)](#), 18 November 2020

purpose. There is indeed an important accountability gap: as it stands, the EPF is not formally subjected to the European Parliament's oversight due to its inter-governmental and off-budget nature. It is also unclear as yet whether the reports of the *ad hoc* College of Auditors for the EPF will be publicly accessible, contrary to the reports of the European Court of Auditors. In addition, the European Ombudsman's services are not accessible to non-EU citizens or residents, and there are no formal alternative mechanism for those affected by the EU's external policies and actions to raise concerns.

**For all EU actors this means:**

- Making continuous information on the type of support provided (e.g. what equipment, what training or financing, for whom, carbon footprint assessment, etc.) **publicly accessible**, even after the completion of an assistance measure.
  - A **dedicated EPF webpage** should report publicly on all approved and delivered items (both 'lethal' and 'non-lethal' equipment) shortly after their approval and delivery.
- Establishing an easily accessible and independent **complaints mechanism** to collect and address potential grievances by affected populations related to EPF assistance measures and other forms of EU engagement with security actors.
- Making EPF support **conditional**, *inter alia*, on effective and accountable: civilian oversight of military forces in partner countries; protection of human rights; anti-corruption measures; and public financial management, or where these are lacking or inadequate, on demonstrable progress towards them.

In particular, EU Member States should:

- Maintain the practice established for the African Peace Facility of **publishing auditors' reports**<sup>12</sup> and **external evaluations**<sup>13</sup>, in particular for EPF assistance measures.
- **Publish** the Council decisions approving individual actions under EPF assistance measures taking the form of a general programme.
- Formalise relations with the **European Parliament** on EPF assistance measures to ensure that Members of the European Parliament are thoroughly informed of all developments and that their suggestions and possible concerns are duly taken into account.
- Refer decisions on exports of military items under the EPF to the European Parliament, as well as to all national parliaments regardless of the country of export, on the grounds that these decisions are being taken **in the name of all** EU member states.
- Task the EU institutions to develop and put in place **innovative accountability mechanisms** (e.g. a civilian complaints mechanism), based on the advice of the European Ombudsman, in order to collect and address potential grievances by affected populations.
- Support, via other funding instruments than the EPF, civil society actors, including men, women, boys and girls from diverse segments of society, to develop their capacity to **monitor independently** the actions of military forces and the impact of EPF assistance measures.

<sup>12</sup> European Court of Auditors, [Special report No 20/2018: The African Peace and Security Architecture: need to refocus EU support](#), September 2018

<sup>13</sup> ECDPM, Cardno, Particip GmbH, [Evaluation of the implementation of the African Peace Facility as an instrument supporting African efforts to manage conflicts on the continent \(April –December 2017\)](#), December 2017

### National parliaments in EU Member States and the European Parliament should:

- Ask their national governments and/or the European Commission and the EEAS whether and how specific EPF assistance measures are:
  - Contributing to increasing human security and fulfilling the EU's objectives in the areas of peace, stability, democratic consolidation, and conflict prevention;
  - Enhancing the EU's political dialogue on security sector reform with the partner government.
- Organise **hearings** with local civil society actors, including women's rights organisations and marginalised groups, to reflect on the security situation and the impact of specific EPF assistance measures on conflict dynamics in partner countries and regions.

### The EEAS and the European Commission should:

- Regularly **report to the European Parliament** (in particular to the Committee on Foreign Affairs (AFET) and the Subcommittees on Security and Defence (SEDE) and on Human Rights (DROI)) on the development of potential EPF assistance measures and on their implementation and evaluation.

### The EEAS, EUDs and CSDP missions should:

- Promote and support the establishment or the functioning of **national accountability mechanisms** (e.g. national ombudsmen, parliamentary oversight, internal whistle-blowing mechanisms, civilian harm tracking and mitigation cells and other internal procedures documenting incidents of civilian harm, etc.) in each partner country, in parallel to any EPF assistance measure.
- Enhance coordination and exchange of information with national civil society organisations in partner countries; **inform** them about the establishment of the EPF and all ensuing assistance measures.
- Establish simple and **widely-publicised mechanisms** for local actors to securely report to EU Delegations and/or CSDP missions any concerns and observations related to EPF assistance measures.
- Establish an internal **civilian harm tracking and mitigation process** for each EPF assistance measure, which would take into account the grievances collected through the civilian complaints mechanism as well as further input received from other internal and external sources.
- Ensure that the relevant EU Delegations and/or CSDP missions **address** reported or otherwise identified problems and duly inform complainants.
- Ensure **access** for post-delivery on-site inspection by relevant experts from the EU or its Member States of any items on the military list exported under an assistance measure.

Significant risks to human security exist with the provision of military assistance in fragile and conflict-affected contexts. EPLO and its member organisations will seek to monitor the implementation of the EPF, including its safeguards, and its impact in the partner countries. They will also continue to provide further input on possible alternative EU responses and on how to minimise potential harm in the design, implementation and monitoring of EPF assistance measures.