



# Support to asylum seekers under the European Social Fund and the Fund for European Aid to the Most Deprived

## Introduction

Given the unprecedented high inflow of people in need of international protection in the Union (i.e. asylum seekers), it is important to recall how the available Union funding can be used to address these challenges.

Although the competence lies primarily with Member States, the European Union can support actions by national governments, local authorities and civil society engaged in the complex and long term process of fostering integration and mutual trust.

The objective of this note is therefore to clarify the scope of support which the **European Social Fund** (ESF) and the **Fund for European Aid to the Most Deprived** (FEAD) can provide to asylum seekers at different stages since their arrival in the Union. It also intends to clarify the differences between these two funds and other Union instruments that provide targeted support to asylum seekers, notably the **Asylum, Migration and Integration Fund** (AMIF), and provides guidance on how complementarities and synergies between the different funds can be achieved.

This note covers third-country nationals within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union (TFEU), stateless persons and persons with undetermined nationality who are in need of international protection (irrespective of whether they have already lodged an application for it).

## PART I: ESF

### 1. Legal framework and limits to the scope of support provided by the ESF to asylum seekers

First of all, in order to better understand the rationale behind the limitation of the scope of ESF support to asylum seekers, it is important to recall the mission of the ESF as set out by Article 162 of the Treaty on the Functioning of the European Union:

*"In order to **improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living**, a European Social Fund is hereby established in accordance with the provisions set out below; **it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining**".*

The main mission of the ESF is thus to improve the employment opportunities of the workers living in the Union. For the programming period 2014-2020 this mission has been translated into four general thematic objectives (TO) and 19 investment priorities, which are set out in Regulation (EU) No 1304/2013 (ESF Regulation). This means that the scope of the ESF support to the integration of asylum seekers – and of migrants more generally - also needs to be regarded in light of the main mission of the ESF as set out in the Treaty.

In fact, asylum seekers and refugees, are explicitly mentioned in the ESF Regulation as one of the target groups that may receive support by the ESF with a view to facilitate their social inclusion and integration into the labour market. This reference is made in recital (6) of the ESF Regulation which states that the ESF should promote social inclusion and, in this context, *"attention should be paid to asylum seekers and refugees to facilitate their participation"*.

Therefore, there are 3 cases in which ESF support can be granted to asylum seekers:

- **When they are legally able to participate in the labour market.** The extent to which asylum seekers have access to the labour market varies across Member States. In this regard, it should be noted that in accordance with Article 15 of Directive 2013/33/EU, Member States, by 20 July 2015 at the latest, must have ensured that third-country nationals or stateless persons who have made an application for international protection in respect of which a decision has not yet been taken ('applicants') have access to the labour market no later than 9 months<sup>1</sup> from the date when they apply for international protection within the meaning of Article 2 (h) of Directive 2011/95/EU. Member States may have decided to grant access to the labour market before the expiry of the 9-month period.
- **For vocational training actions.** Directive 2013/33/EU (Article 16) also establishes that Member States may allow applicants access to vocational training

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<sup>1</sup> 12 months in the case of the UK. No access in the case of IE, 6 months in the case of DK.

irrespective of whether they have access to the labour market<sup>2</sup>. Therefore, in case the national legislation provides that these asylum seekers (who applied for international protection in respect of which a decision has not yet been taken) have access to vocational training, these asylum seekers are also eligible in case the ESF supports vocational training.

- **For actions concerning the education of their children.** Finally, as regards minor children of applicants and applicants who are minors, Directive 2013/33/EU (Article 14) provides that Member States are to grant access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced. Therefore, minor children of asylum seekers or asylum seekers who are minor are eligible for ESF support under the ESF investment priorities on education which address minors (e.g. access to primary and secondary education, tackling early school leaving).

## 2. Examples of ESF support to asylum seekers

ESF support can be provided to asylum seekers legally able to participate in the labour market as explained above, and asylum seekers may receive any type of support under ESF investment priorities such as 9i (active inclusion), 9ii (integration of marginalised communities) or 9iii (combating all forms of discrimination) within the poverty and social inclusion thematic objective (Article 3 (1) (b)) (e.g. specific training for asylum seekers such as language classes, counselling and assistance to asylum seekers and their families, campaigns against the discrimination of asylum seekers).

Asylum seekers may also benefit of other general measures that do not specifically target them. This is the case, for instance, of measures supported under the education (TO 10) or employment (TO 8) thematic objectives, that may also benefit asylum seekers and/or their families among other target groups (e.g. measures to promote equal access to good quality early childhood, primary and secondary education or gender equality).

Finally, the ESF can also provide support to reinforce the capacity of public administrations and also of stakeholders that provide support to asylum seekers, such as non-governmental organisations (NGOs). This support can be funded under the institutional capacity and public administration thematic objective or also under Technical Assistance in the case of stakeholders.

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<sup>2</sup> Access to vocational training relating to an employment contract shall depend on the extent to which the migrant (who has made an application for international protection in respect of which a decision has not yet been taken) has access to the labour market in accordance with Article 15 of Directive 2013/33/EU.

## **PART II: FEAD**

### **1. Legal framework and limits to the scope of support provided by the FEAD to asylum seekers**

The Fund for European Aid to the Most Deprived was established by Regulation (EU) No 223/2014 (FEAD Regulation) with the specific objective to alleviate the worst forms of poverty in the EU such as homelessness, child poverty and food deprivation and in this way contribute to eradicating poverty in the Union in line with the Europe 2020 strategy. The budget of FEAD amounts to approximately €3.8 billion for the 2014–2020 period.

Subject to a decision at national level, the assistance to be provided by FEAD may take the following forms:

- 1) food and/or basic material assistance operational programme (OP I), which provides food support and/or other types of material assistance (basic consumer goods of a limited value for the personal use of the recipients);
- 2) social inclusion operational programme (OP II), which finances social inclusion activities outside active labour market measures.

According to the definition of 'most deprived persons' set out in Article 2(2) of the FEAD Regulation, the exact group or groups of people to be targeted is identified at national level.

Therefore, the eligibility of asylum seekers depends on the way Member States define the type of assistance and who may benefit from this fund. Depending on the criteria used to identify the FEAD recipients, it is possible for asylum seekers to receive assistance.

The FEAD target group may be defined in the Operational Programme (mandatory for OP II) or at a later stage. While in the case of OP I, Member States are only asked to describe in the OP the mechanism for setting the eligibility criteria for the most deprived persons, some OPs contain also specific information about who will be targeted. If the OP contains a precise definition of the target group, which excludes the possibility for asylum seekers to receive support, then an amendment of the OP would be necessary. In addition, the national criteria for the most deprived and how they are identified should allow for asylum seekers to actually be targeted.

## 2. Examples of FEAD support to asylum seekers

Provided that migrants are targeted by FEAD operations, the scope of support would depend on the scope of support of the OP: Asylum seekers could benefit both from food and/or basic material assistance in the case of OP I or from social inclusion activities under OP II. That is why FEAD support to asylum seekers may consist of the following:

1) In the case of a food and/or basic material assistance operational programme (OP I):

food support (commonly takes the form of food packages or meals);

basic material assistance (basic consumer goods of a limited value and for the personal use of the most deprived, e.g. clothing, footwear, hygiene goods, school material, sleeping bags).

2) In the case of a social inclusion operational programme (OP II):

In the case of OP II the eligible activities are determined by Member States in accordance with the requirements of the FEAD Regulation. Examples of activities include bringing recipients to other existing services, language courses, civic orientation operations (information on conditions, rights and obligations), basic language support and training, health promotion activities.

## PART III: Asylum, Migration and Integration Fund

### 1. Legal framework

In the current Multiannual Financial Framework, a specific financial instrument has been set up to support, *inter alia*, the integration of third country nationals: the Asylum, Migration and Integration Fund (AMIF). This Fund builds on the financial instruments set up for the previous Multiannual Financial Framework (2007-2013) in the field of asylum, migration and integration i.e. the [European Refugee Fund \(ERF\)](#), the [European Fund for the Integration of third-country nationals \(EIF\)](#) and the [European Return Fund \(RF\)](#).

With a total of EUR 3.137 billion for the for the period 2014-2020, AMIF promotes the efficient management of migration flows and the implementation, strengthening and development of a common Union approach to asylum and immigration.

In the field of asylum, it aims at strengthening and developing all aspects of the Common European Asylum System, by supporting actions which can relate to the different stages of the asylum procedure and to the different aspects of the asylum policies (reception conditions, asylum procedure). Particular attention is paid to the needs of vulnerable groups.

In the field of legal migration and integration of third-country nationals, it encourages the development of integration strategies promoting a local and regional approach, including actions taking place in third countries during the pre-departure stage. Particular attention is paid to the needs of beneficiaries of international protection (who have been included in the scope of the AMIF, which was not the case under the EIF, as they were covered under ERF) and vulnerable groups of migrants (unaccompanied minors, women, youth and children, the elderly, etc.)

Most of the funds under AMIF are managed under shared management. Member States have an obligation to allocate **at least 20%** of the total basic allocation for their national programme to the specific objective on asylum and **at least 20%** of the total basic allocation for their national programme to the specific objective on legal migration/integration (Article 15(1) (a)).

The Annex contains a flowchart with the different steps under the Common European Asylum System.

Regulation (EU) No 516/2014 of 16 April 2014 sets up the general rules for implementation of the AMIF.

## **PART IV: Complementarities of ESF and FEAD support with AMIF**

### **1. Introduction**

Taking into account the wide scope of support provided by the AMIF in this area (including with regard to the effective integration of asylum seekers in Member States), it is important to determine the scope of assistance of the different Funds and explore how synergies and complementarities can be exploited.

There are **two elements** that should be considered to determine which Fund can provide which type of support to asylum seekers as from their arrival in the Union until they are recognised as beneficiaries of international protection (e.g. refugee) and are fully integrated into the labour market:

#### **1) The mission of the Funds (the objective to be achieved and the intervention logic)**

As explained in the previous sections, the main difference between the three Funds is their mission. Therefore, whereas the support provided by the ESF to asylum seekers will have as its main objective the integration of asylum seekers into the labour market, the support provided by the AMIF is not limited to this objective, but tackles more broadly the promotion of effective integration of third-country nationals.

It is important to underline that in relation to labour market participation, AMIF is limited to pre-departure measures taking place in third countries enhancing employability in a Member State and preparatory actions to facilitate access to the labour market taking place in the Member States.

In the case of the FEAD the main objective is to alleviate poverty and to promote the inclusion of the asylum seekers in society (provided they meet the criteria for most deprived person as set out by the Member States). The FEAD does not fund active labour market measures.

#### **2) The target group, i.e. the status of the person from the arrival in the Union and the application for international protection until the full integration into the labour market.**

The definition of the eligible target group stems from the different mission of the Funds. As seen above, while in the case of the ESF, asylum seekers, as a general rule<sup>3</sup>, are eligible only provided they have access to the labour market, this condition does not apply to the other Funds. In the case of the FEAD the eligibility of a person depends on the criteria for most deprived persons set out by the Member State. In the case of the AMIF, support can be provided to:

a) third-country nationals who have not yet received a final negative decision in relation to their request to stay, their legal residence and/or international protection in a Member State;

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<sup>3</sup> See Part I for more information, in particular, on the exceptions to this rule.



- b) third-country nationals enjoying the right to stay, legal residence and/or international protection in a Member State;
- (c) third-country nationals who are present in a Member State and do not or no longer fulfil the conditions for entry and/or stay in a Member State, including those third-country nationals whose removal has been postponed.

## 2. Coordination of actions supported by the Funds

There are types of actions that may be supported by more than one Fund. This is the case, for instance, of training or self-employment actions which can be supported both by the ESF and the AMIF. To illustrate this, the table shows which measures set out in Article 9 of the AMIF Regulation<sup>4</sup> (integration measures) could also be eligible under the ESF or the FEAD:

| <b>Integration measures set out in Art. 9 AMIF Regulation</b>   | <b>Eligible support by FEAD</b>   | <b>Eligible support by ESF</b>  |
|---|---|---|
| Setting up and developing integration strategies, including needs analysis, improvement of integration indicators, evaluation   | NO  | YES   |
| Advice and assistance in areas such as housing, means of subsistence, administrative and legal guidance, health, psychological and social care, child care and family reunification   | YES (OP II) with a view to their inclusion in society   | Partly  |
| Actions introducing migrants to the receiving society and enabling them to adapt to it, to inform them about their rights and obligations, to participate in civil and cultural life and to share values enshrined in the Charter of Fundamental Rights of the European Union | YES (OP II) with a view to their inclusion in society   | YES, in case these measures are part of an integrated set of measures to help the asylum seekers integrate into the labour market |
| Education and training, including language training and preparatory actions to facilitate access to the labour market   | NO  | YES   |
| Self-empowerment actions including to enable migrants to provide for themselves   | YES (OP II) with a view to their inclusion in society (outside active labour market measures) | YES, in case these measures are part of an integrated set of measures to help the asylum seekers integrate into the labour market |

<sup>4</sup> Article 9 of the AMIF Regulation sets out the integration measures that may be supported by the AMIF under specific objective 2, the objective under which most of the measures could be eligible under any of the funds.

|  |   |     |
|--|---|-----|
|  |   |     |
| Actions to promote meaningful contact and constructive dialogue between migrants and the receiving society, and actions to promote acceptance by the receiving society | NO  | YES |
| Equal access and equal outcomes in dealings with public and private services, including adaptation to those services to dealing with migrants                          | YES (OP II) with a view to their inclusion in society | YES |
| Capacity-building of beneficiaries   | YES for partner organisations                         | YES |

It is also important to recall that for the purpose of programming and implementation of the AMIF integration measures, the AMIF Regulation obliges Member States to include ESF managing authorities in the partnership of the AMIF programme.

As explained above, the main distinction between the three Funds is not the type of actions supported, but the specific objective to be achieved by the actions, in the light of the different missions of the Funds. For instance, if the objective of the training is only to provide general information on the country, this action would be eligible under the AMIF or FEAD, but not under the ESF unless it is part of an integrated set of actions aimed at the integration of asylum seekers into the labour market. On the contrary, if the objective of the training is to provide the migrant with the necessary skills to adapt to the working conditions in the Member State, then this action would be eligible both under the AMIF (which has a wider scope of eligibility with regard to migrants – including asylum seekers - but less financial resources) and the ESF.

This means that, in some cases (where, in accordance with EU law, an action may be eligible under more than one Fund), the Member State will have to determine which Fund to use in order to make the most effective use of the available funding under each of the Funds to address the needs of the asylum seekers and also to avoid double funding. In case more than one Fund finances a specific action (e.g. material aid by AMIF and FEAD), national authorities should strive to ensure complementarity.

In this context, it is recommended that Member States take into account the different missions of the Funds, as well as the financial resources available under each Fund. For instance, although - with regard to migrants - the scope of the AMIF is wider than the ESF when it comes to the target groups and the measures that can be supported, the amount of resources of this Fund is much more limited. While the AMIF plays a major role in the first stages following the arrival of asylum seekers in the Union, the ESF would be a more appropriate instrument to support the integration of the asylum seekers into the labour market.

The table below illustrates the type of actions<sup>5</sup> that could be supported under each of the three Funds<sup>6</sup>, depending on the status and the needs of the persons as from their arrival in a Member State:

| Timeline / Status of the persons   | Eligible support by AMIF   | Eligible support by FEAD  | Eligible support by ESF   |
|--|--|---|---|
| <b>Arrival in the Union</b>  | <p><b>YES</b><br/>                     Examples:</p> <p>Material aid, including food, clothing, accommodation, assistance at the border.<br/>                     Education, training, support services, health and psychological care.<br/>                     Language training.<br/>                     Social assistance, help with administrative/judicial formalities.<br/>                     Counselling on asylum procedure.<br/>                     Legal assistance</p>   | <p><b>YES</b><br/>                     Food assistance<br/>                     Basic material assistance</p>   | <p><b>NO</b></p>  |
| <b>Applicants for international protection and having no access to the labour market yet</b> | <p><b>YES</b><br/>                     Same as above and access to integration measures<br/>                     Examples:<br/>                     Training and preparatory actions to facilitate access to the labour market.<br/>                     Advice on housing, administrative and legal matters.<br/>                     Self-empowerment.<br/>                     Dialogue with receiving society.<br/>                     Promoting equality.<br/>                     Capacity-building of beneficiaries (NGOs, etc.)</p> | <p><b>YES</b><br/>                     Food assistance<br/>                     Basic material assistance<br/>                     Social inclusion actions</p> | <p><b>YES BUT LIMITED ACCESS</b><br/>                     Vocational training in case the national rules so provide.<br/>                     Education for children.<br/>                     Equipment necessary to implement the above measures<sup>7</sup>.</p> |

<sup>5</sup> The list of actions included in the table is not exhaustive, but only illustrative.

<sup>6</sup> On the basis of the eligibility rules as set out in the basic acts of these Funds. It should be noted, however, that eligibility is also determined by the national programmes and national eligibility rules set out by Member States

<sup>7</sup> For ESF support in the 2014-2020 programming period.

| Timeline /Status of the persons   | Eligible support by AMIF    | Eligible support by FEAD   | Eligible support by ESF   |
|---|-----------------------------|--|---|
| <b>Applicants for international protection and having access to the labour market<sup>8</sup></b> | <b>YES</b><br>Same as above | <b>YES</b><br>Food assistance<br>Basic material assistance<br>Social inclusion actions | <b>YES</b><br>General access to ESF support, including equipment necessary to implement these measures <sup>9</sup><br><br>Examples:<br>Training<br>Education<br>Coaching<br>Counselling activities |
| <b>Beneficiaries of international protection</b>  | <b>YES</b><br>Same as above | <b>YES</b><br>Food assistance<br>Basic material assistance<br>Social inclusion actions | <b>YES</b><br>General access to ESF support including equipment necessary to implement these measures <sup>10</sup><br><br>Examples:<br>Training<br>Education<br>Coaching<br>Counselling activities |

## Annex - Common European Asylum System

<sup>8</sup> See Part I – section 1.

<sup>9</sup> For ESF support in the 2014-2020 programming period.

<sup>10</sup> For ESF support in the 2014-2020 programming period.

# COMMON EUROPEAN ASYLUM SYSTEM (CEAS)

**ASYLUM** is granted to people fleeing persecution or serious harm.

The **process for applying asylum** is now similar throughout the EU. (Asylum Procedures Directive)

Each applicant's **fingerprints are taken** and sent to a database called EURODAC. (EURODAC Regulation)  
These data are used to help **identify the country responsible for the asylum application**. (Dublin Regulation)

Asylum applicants receive **material reception conditions**, such as housing and food. (Reception Conditions Directive)

An asylum applicant is **interviewed by a case worker** trained in EU law, with the help of an interpreter, to determine whether he/she may qualify for refugee status or subsidiary protection. (Qualification Directive and Asylum Procedures Directive)

**Asylum is not granted** to the applicant at "first instance", but this refusal may be appealed in court.

**Confirmation of the negative "first instance" decision** by the court, following which the applicant may be returned to his/her country of origin or transit.

**Overturning of the negative "first instance" decision** by the court.

**Refugee or subsidiary protection status is granted**, which gives the person certain rights, such as access to a residence permit, the labour market and healthcare. (Qualification Directive)

