



Policy briefing to the European Parliament on the European Commission proposal to amend the 2020 general budget

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Privacy International

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This is a Policy Briefing by Privacy International (PI) to the Committee on Budgets of the European Parliament in relation to the European Commission's proposal to amend the general budget 2020 in order to, among other measures, provide assistance to Greece in the context of the Covid-19 outbreak.

Privacy International (PI) is a leading charity advocating for strong national, regional, and international laws that protect the right to privacy around the world. Founded in 1990 and based in London, PI challenges overreaching state and corporate surveillance so that people everywhere can have greater security and freedom through greater personal privacy.

Within its range of activities, PI investigates how peoples' personal data is generated and exploited, and how it can be protected through legal and technological frameworks.

PI employs technologists, investigators, policy experts, and lawyers, who work together to understand the technical underpinnings of emerging technology and to consider how existing legal definitions and frameworks map onto such technology.

PI is frequently called upon to give expert evidence to Parliamentary and Governmental committees around the world on privacy issues and has advised, and reported to, among others, the Parliament of the United Kingdom, the Council of Europe, the European Parliament, the Organisation for Economic Co-operation and Development, and the United Nations.

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Summary

This is a Policy Briefing by Privacy International (PI) to the Committee on Budgets of the European Parliament in relation to the European Commission's proposal to amend the general budget 2020 in order to, among other measures, provide assistance to Greece in the context of the Covid-19 outbreak.

The EU urgently needs to step up and provide assistance to protect the health and safety of people trapped in camps on the Greek islands - not just to protect their welfare, but to contain the virus itself as a measure of global public health. However, we consider that the European Commission's current proposed allocation of funds is insufficient to ensure the safety of refugees and people on the move, and inappropriately allocates resources to the building of more camps which will only exacerbate the spread of the virus in prison-like conditions.

Therefore, we call on the EU to:

- Revise the proposed allocation of funds to ensure the protection of refugees, asylum seekers and people on the move during the pandemic;
- Ensure all expenditure is fully transparent in a publicly-accessible format and that this expenditure is lawful;
- Provide people a safe alternative elsewhere in Greece or other EU member states, or at the very least ensure that existing accommodation takes the shape of open facilities and do not constitute *de facto* detention centres. The accommodation facilities must guarantee access to the full asylum procedure as provided under EU and international law, including free legal aid and the right to an effective remedy, while upholding the principle of non-refoulement without exception.
- Ensure that accommodation facilities provide humane and dignified conditions, adequate and timely vulnerability assessments, effective security and sexual and gender-based violence (SGBV) safeguarding, as well as access to education for children within 3 months. The accommodation must also be verified by independent health experts, or else, asylum seekers and migrants must be provided a safe alternative elsewhere in Greece or other EU member states;
- Ensure ex-ante human rights, gender, social, labour as well as data protection impact assessments are conducted before providing the funds;
- Ensure adequate privacy protections are mainstreamed within programmes promoting human rights, good governance and the upholding of the rule of law;
- Ensure Parliamentary oversight with a sufficient mandate and powers and to obtain relevant information.

Additionally, given the urgent need for tackling this crisis, law enforcement and immigration authorities should suspend the detention of those who fail to provide adequate documentation until this pandemic is over.

Introduction

Last March 27th, the European Commission submitted a draft proposal to amend the general budget 2020 in order to, among other measures, provide assistance to Greece in the context of the Covid-19 outbreak.¹

There are severe concerns not only about the dire situation in which people are being forced to live, but also on the impact of public health and efforts to curtail the spread of the virus, both at the Turkish-Greek border and in the camps on the Greek islands.

The Greek government itself has called the overcrowded camps, where more than 40,000 refugees, asylum-seekers and people on the move are currently trapped, as a “ticking health bomb”. Greece already announced that it has quarantined two camps on the outskirts of Athens after at least 20 asylum seekers tested positive for the virus in the one and a resident tested positive in the other.²

1. European Commission proposal and why it is problematic: key points

Having assessed the European Commission proposal, we are concerned about the proposed distribution of funds.

These are the key issues:

1. In the context of a global pandemic, while everyone is at risk of carrying or contracting the virus, refugees, asylum-seekers and people on the move can be disproportionately affected because of their pre-existing precarious social, economic and legal contexts.
2. The measures in the Commission’s proposal do not sufficiently ensure to ensure the safety of refugees, asylum seekers and people on the move in light of the Covid-19 pandemic. Instead, the proposed distribution of funds focuses on enhancing control and surveillance over migrants.
3. The largest portion of funds will be allocated to build more camps to keep asylum seekers locked up. The proposal also suggests contributing to ‘relevant equipment’ for border control, without any clarification on what this equipment may be.

Therefore, we call on the EU to reconsider its proposal to ensure it aims at promoting the meaningful protection of refugees, asylum seekers and people on the move during the pandemic instead of using Covid-19 crisis as an excuse to increase control over an already marginalised population.

¹ European Commission, Draft amending Budget 2020, Assistance to Greece in response to increased migration pressure Immediate measures in the context of the COVID-19 outbreak, Support to post-earthquake reconstruction in Albania, Other Adjustments, 27 March 2020, Brussels, COM(2020) 145 final2020/049 (BUD), <https://ec.europa.eu/transparency/regdoc/rep/1/2020/EN/COM-2020-145-F1-EN-MAIN-PART-1.PDF>.

² BBC News, “Coronavirus: Second Greek migrant facility quarantined”, 5 April 2020, available at <https://www.bbc.co.uk/news/world-europe-52174285>.

2. Our analysis of the European Commission proposal

Already since at least 2015, the EU has been using development and security funds to train and finance EU and non-EU security forces and equip them with surveillance capabilities, as part of broader EU efforts to stop migration to Europe.³ The current proposal is another step in the same direction, which risks hampering individuals' access to the asylum system, a right enshrined in international law, whilst also failing to protect them from the Covid-19 health risks.

The Commission proposes to provide “€350 million to meet the needs resulting from the increased migration pressure in Greece” due to the conflict in Syria and the problems with the implementation of the EU-Turkey agreement.

In the text, the Commission further highlights the effective protection of the external borders of Greece and Bulgaria as a key driving factor for providing additional funds.

Specifically, the Commission proposes to allocate:

- €220m on creating yet another five Multi-Purpose Reception and Identification Centres (MPRICs) in the Greek islands in 2020.
- €10m on Voluntary Return and Reintegration Assistance (AVRR) programmes.
- €50m for services in the new camps and emergency items.
- €50m to be available under the Internal Security Fund (ISF) Borders & Visa to cover deployment and operational costs of border guards and police officers at the external border of Greece and/or Bulgaria and acquisition of relevant equipment.
- €10m to Frontex to coordinate a return programme for the quick return of persons without the right to stay to countries of origin from Greece.
- €10m to European Asylum Support Office (EASO) for the deployment of experts in Greece.

This budget distribution does not tackle the urgent issues raised by the Covid-19 pandemic. Instead, it once again aims at increasing surveillance and control over asylum seekers and migrants in yet another attempt to counter migration and obstruct their access to the asylum processes without recognizing the systemic factors that compel people to migrate in the first place.

The proposal is also unclear on several points that risk further unnecessarily enhancing surveillance measures:

a. Lack of clarity in relation to ‘relevant equipment’

The proposal suggests that €50 million “to be made available under ISF Borders & Visa, to cover the costs related to the deployment and operational costs of borders guards and police officers at the external borders of Greece and/or Bulgaria and the acquisition of relevant equipment.”

However, while referring to ‘relevant equipment’ for border control, the budget does not clarify what this is. The proposal provides no indication on what equipment may fall under this category. This phrasing makes it impossible to assess whether the acquisition and use of the equipment will be lawful, necessary and proportionate, or what safeguards exist to ensure the equipment will be used in adherence to EU fundamental rights.

³ Privacy International Campaign, Drivers of Surveillance, <https://privacyinternational.org/challenging-drivers-surveillance>, see below Section 3 for further information.

Therefore, we call on the EU to ensure that all expenditure is fully transparent in a publicly-accessible format and that the implementing parties conduct publicly-accessible assessments regarding the lawfulness of any such equipment.

b. Construction of camps and more measures of control

The largest part of the €350 million funds (€220m) is recommended to be dedicated on creating yet another five Multi-Purpose Reception and Identification Centres (MPRICs) in the Greek islands.

There is little information on how this budget will be spent. Specifically, there is no assurance that the Centres will be adequate to ensure that the health, well-being and fundamental rights of the vulnerable groups of people they are designed to house. Given the scale of the current over-crowding and urgent need to ensure that people have access to sanitary accommodation and healthcare, it is simply inappropriate to allocate yet more funds towards building camps, particularly in the time of a global pandemic without ensuring they are adequate and address the urgent needs of vulnerable people.

Numerous studies show that viral transmissions such as Covid-19 will decimate overcrowded refugee camps due to inability to practice social distancing, inadequate access to water, and appropriate medical care. The UN and Médecins Sans Frontières, as well as academics and human rights lawyers, have all called for the evacuation of refugee camps, not the building of new facilities.⁴

Alternatively, at the very least the EU must ensure that these accommodation facilities are open and do not constitute *de facto* detention centres, and must guarantee access to the full asylum procedure as provided under EU and international law, including free legal aid and the right to an effective remedy, while upholding the principle of non-refoulement without exception. Moreover, such accommodation facilities must provide humane and dignified conditions, adequate and timely vulnerability assessments, effective security and sexual and gender-based violence (SGBV) safeguarding, as well as access to education for children within 3 months.⁵

Therefore, we call on the EU to either provide refugees, asylum seekers and people on the move a safe alternative elsewhere in Greece or in other EU member states or at the very least ensure that existing accommodation is adequate and verified by independent experts on an ongoing basis.

c. Identification procedures

We also raise our concerns around the so-called “identification procedures”, which involve the police or Frontex officers asking prospective asylum seekers and people on the move questions and take their fingerprints and picture, are also of concern.⁶ Without undergoing this process people cannot access any aid in the camps.

Identification procedures and the processing of data may be necessary in order to ensure aid distribution and subsequently process asylum requests. However, in order for any such processing to

⁴ Médecins Sans Frontières, Evacuation of squalid Greek camps more urgent than ever over COVID-19 fears, Press Release, 12 March 2020, available at <https://www.msf.org/urgent-evacuation-squalid-camps-greece-needed-over-covid-19-fears>. See also, Deepika Khanna and Stevan Weine, “COVID-19 Could Ravage Refugees and Asylum Seekers”, Just Security, 3 April 2020, available at <https://www.justsecurity.org/69509/covid-19-could-ravage-refugees-and-asylum-seekers/>.

⁵ Required by Art. 14 Directive 2013/33/EU and Art. 14 Proposal for a Recast Reception Conditions Directive.

⁶ Refugee.info, Reception and Identification Procedure, available at <https://www.refugee.info/greece/islands-asylum-information--greece/reception-and-identification-procedure?language=en>

be lawful, it must be appropriately regulated, with appropriate safeguards put in place to ensure among others that information is not shared with third parties or used for other purposes than those initially collected. Currently, there are no guarantees at the moment that this will be the case.

In addition, given the urgent need for tackling the Covid-19 crisis, law enforcement and immigration authorities should suspend the detention of those who fail to provide adequate documentation until the pandemic is over.

3. Broader context: The EU's recent response to migration and the right to privacy

The European Union plays an instrumental role in protecting people's privacy around the world. Its data protection regulation sets the bar globally, while its courts have been at the forefront of challenges to unlawful government surveillance practices.

By prioritising migration control, the EU's foreign aid budget and cooperation agreements are being used to encourage and enable other countries to carry out increased surveillance and entrench the political control of local authorities.

The significant privacy and data protection concerns present a major threat to people's human rights and security, particularly for groups that are highly marginalised such as refugees, asylum-seekers and people on the move.

The EU Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa (EUTF for Africa) uses development aid and cooperation funds to manage and deter migration to Europe. It currently funds numerous projects presenting urgent threats to privacy, including developing biometric databases, training security units in surveillance, and equipping them with surveillance equipment.⁷

The Fund lacks key transparency and oversight mechanisms because the European Parliament is only currently an "observer". The significant privacy and data protection concerns present a major threat to people's human rights, security, and to democratisation in third countries.

We have already observed in our analysis of the EUTF how emergency instruments - which have to be flexible by their very nature - used in the context of migration management have led to an increased use of security and control measures, while failing to measure the objectives for which they were set. In this previous briefing, we provide a series of recommendations for the future of the Fund in the context of the next budget.⁸

Other similar measures will be integrated within the Neighbourhood, Development and International Cooperation Instrument (NDICI) proposed under the EU's next 2021-2027 budget. The new instrument will provide funding for surveillance, border security, and migration management projects in third countries currently undertaken by a number of projects across various funds which are to form part of the NDICI. Several of these projects raise significant concerns regarding the right to privacy. In a brief analysis we raised our concerns regarding the challenges that this new instrument poses to the

⁷ Privacy International, "The EU Funds Surveillance Around the World: Here's What Must be Done About it", 18 September 2019, available at <https://privacyinternational.org/long-read/3221/eu-funds-surveillance-around-world-heres-what-must-be-done-about-it>.

⁸ Privacy International, Policy Briefing - The Future of the EU Trust Fund for Africa, September 2019, available at <https://privacyinternational.org/advocacy/3220/policy-briefing-future-eu-trust-fund-africa>

right to privacy and provided a list of recommendations for the upcoming finalisation of the NDICI and the Multiannual Financial Framework.⁹

4. How could the funds actually be used?

In the context of a global pandemic, while everyone is at risk of carrying or contracting the virus, displaced populations can be disproportionately affected because of their pre-existing precarious social, economic and legal contexts. Undocumented refugees, asylum seekers and people on the move may, for example, be confined in unsanitary and cramped conditions making social distancing impossible. Others may not seek proper care for fear of being reported to the authorities, or if their inability to work means they fear being charged for any access.

To alleviate such fears, Portugal recently announced that all migrants and asylum seekers currently residing in the country have the same rights as Portuguese residents for purposes of receiving treatment for coronavirus.¹⁰ This is an example of how good national policy may encourage people to seek medical assistance without fear of deportation or other consequences relating to their residence status - and help fight the virus.

Last month, over 40 organisations, including PI, called on the UK government to take measures to protect migrant populations at risk of Covid-19 and allow them to access healthcare for free and safely.¹¹

On 25 March, 121 organisations signed an open letter calling Greece and the EU to take urgent action to prevent a Covid-19 outbreak in Greek refugee camps. The European Commission should take into account their demands that have not been reflected in the proposal.¹²

On April 3rd, the UN Special Rapporteurs on migrants, Felipe González Morales, and on trafficking in persons, Maria Grazia Giammarinaro, expressed concerns that some migrants, including asylum seekers, do not have access to minimal protection against the contagion, not even clean water to wash their hands:

“No one should be left behind in this global fight against the pandemic. Governments must adopt measures ensuring every individual in the national territory, regardless of their migration status, is included and has access to health services in order to achieve successful containment of the Covid-19 pandemic,” they said.¹³

⁹ Privacy International, Policy Briefing - The EU Neighbourhood, Development and International Cooperation Instrument, September 2019, available at <https://privacyinternational.org/advocacy/3219/policy-briefing-eu-neighbourhood-development-and-international-cooperation-instrument>

¹⁰ Colin Drury, “Coronavirus: Portugal to treat migrants as residents during pandemic”, Independent, 28 March 2020, available at <https://www.independent.co.uk/news/world/europe/coronavirus-portugal-migrants-asylum-seekers-treatment-residents-a9431831.html>.

¹¹ Privacy International, “Covid-19 doesn't discriminate based on immigration status - nor should the Home Office”, March 2020, available at <https://privacyinternational.org/advocacy/3490/covid-19-doesnt-discriminate-based-immigration-status-nor-should-home-office>.

¹² Arsis, “Protect the most vulnerable to ensure protection for everyone! ‘Restore legality to protect refugees and the society at large amidst the pandemic’”, 27 March 2020, available at <http://www.arsis.gr/en/protect-the-most-vulnerable-to-ensure-protection-for-everyone-restore-legality-to-protect-refugees-and-the-society-at-large-amidst-the-pandemic/#more-23532>

¹³ UN OHCHR Press release, “UN experts call on Governments to adopt urgent measures to protect migrants and trafficked persons in their response to COVID-19”, 3 April 2020, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25774&LangID=E>.

We therefore call on the EU to reconsider its proposal and to ensure that the allocation of funds aims at promoting the protection of asylum seekers and migrants during the pandemic instead of using the Covid-19 crisis as an excuse to enhance surveillance measures and control over them.

5. Recommendations

The EU urgently needs to step up and provide assistance to protect the health and safety of people trapped in camps on the Greek islands - not just to protect their welfare, but to contain the virus itself as a matter of global public health. However, we consider that the current European Commission proposal for funds allocation is insufficient to ensure the safety of refugees, asylum seekers and people on the move does not present an appropriate allocation of funds to respond to the crisis in an adequate way which upholds fundamental rights and which has the potential of adequately addressing the Covid-19 risks in Europe.

Therefore, we call on the EU to:

- Revise the proposed allocation of funds to ensure the protection of refugees, asylum seekers and people on the move during the pandemic;
- Ensure all expenditure is fully transparent in a publicly-accessible format and that this expenditure is lawful;
- Provide people a safe alternative elsewhere in Greece or other EU member states, or at the very least ensure that existing accommodation takes the shape of open facilities and do not constitute *de facto* detention centres. The accommodation facilities must guarantee access to the full asylum procedure as provided under EU and international law, including free legal aid and the right to an effective remedy, while upholding the principle of non-refoulement without exception;
- Ensure that accommodation facilities provide humane and dignified conditions, adequate and timely vulnerability assessments, effective security and sexual and gender-based violence (SGBV) safeguarding, as well as access to education for children within 3 months. The accommodation must also be verified by independent health experts, or else, asylum seekers and migrants must be provided a safe alternative elsewhere in Greece or other EU member states;
- Ensure ex-ante human rights, gender, social, labour as well as data protection impact assessments are conducted before providing the funds;
- Ensure adequate privacy protections are mainstreamed within programmes promoting human rights, good governance and the upholding of the rule of law;
- Ensure Parliamentary oversight with a sufficient mandate and powers and to obtain relevant information.

Additionally, given the urgent need for tackling this crisis, law enforcement and immigration authorities should suspend the detention of those who fail to provide adequate documentation until this pandemic is over.

Annex I: The drivers of surveillance: what is the problem and what should be done about it

Surveillance technologies and practices developed and used by the most advanced countries in the world are being spread globally, including to countries which lack safeguards for their use, or in conditions where such safeguards are not applied or enforced. Without such safeguards, surveillance is being used to entrench political control, and even used to spy on activists, journalists, dissidents and any opposition.

These transfers of surveillance are driven by governments and institutions aiming to outsource the ongoing wars on migration, terror and drugs to other countries.

These processes are sanctioned without the levels of transparency and oversight required, while the few formal mechanisms aimed at limiting abuses are wholly inadequate. This facilitates serious violations of human rights, reinforces authoritarianism, undermines governance, and drives corruption. These practices also divert money and other resources away from development and other aid, instead giving billions of dollars to security agencies and surveillance companies.

Long-term security globally is best pursued by ensuring genuine democratic and accountable institutions and governments – something only possible through the fulfilment of privacy and other human rights. To do this, states and institutions must:

- Stop the export of surveillance to those who use it to unlawfully spy on people and for political control
- Ensure that any such surveillance which is exported complies with international human rights standards and is adequately governed by the legal framework in that country
- Promote legislation and practices which provide safeguards and adequately govern the use of surveillance powers in countries around the world
- Ensure that no resources are diverted from aid projects to be used for surveillance
- Ensure there exist appropriate levels of transparency and accountability

