

DEMOCRACY AND HUMAN RIGHTS

THE INTEGRATION AND DEVELOPMENT FUND

Legal opinion on the feasibility of a European Union-funded Municipal Integration and Development Initiative

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Access to funding can be linked to the voluntary acceptance of refugees. However, it is the Member State that decides on such admissions and on whether or not towns and cities can have direct access to funding.



The primary legislation dictates that funding for urban development must either, at least indirectly, benefit the integration of third-country nationals or it must not be linked to the reception of refugees at all.



To enable the fund's genuine implementation, the primary legislation must be amended to allow urban development funding to be independent of integration while being linked to the voluntary acceptance of refugees.

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funded Municipal Integration and Development Initiative



**HUMBOLDT-VIADRINA
Governance Platform**

The HUMBOLDT-VIADRINA Governance Platform's Municipal Integration and Development Initiative aims to decentralise EU refugee policy and provides innovative solutions to strengthen municipalities as key actors.

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A

THE ISSUE FOR EXPERT OPINION

In the European Union, the refugee policy lacks a medium- and long-term strategy to support stakeholders in the EU who are willing to accept and integrate refugees. This particularly includes municipalities which have so far not been sufficiently recognised as independent stakeholders. The EU should set up an independent “Integration and Development Fund” so that instead of viewing the acceptance of refugees as a burden, it is turned into an opportunity for sustainable development (<https://www.governance-platform.org/initiativen/midi-2/>). In this way, municipalities taking part in relocation programmes for asylum seekers within the EU, such as from camps on the Aegean Islands for instance, can directly receive funds for accepting and integrating refugees. In turn, these municipalities can then also be granted the same amount of resources to fund their own municipality development projects. Project proposals are developed by the municipalities themselves in collaboration with local civil society stakeholders in participatory stakeholder forums.

From the perspective of EU law, the first question to be asked is whether or not the European Union’s competence to establish such a fund can be derived from the primary legislation.

A good starting point is provided by Articles 78 and 79 of the Treaty on the Functioning of the European Union (TFEU) which deal with the competences of the European Union in the area of asylum and immigration, and lay the foundations for the Asylum, Migration and Integration Fund (AMIF), furthermore, the competences to promote municipality development (Articles 175 et seq. TFEU), on which the European Regional Development Fund is based, and lastly the competence for setting up the European Social Fund (Article 162 TFEU), on the basis of which the European Social Fund (ESF) was established. In connection with the competences in the area of asylum and immigration, focus should be given in particular to the extent to which Article 79 (4) TFEU, as the European Union’s mechanism for supporting and coordinating integration, also allows the promotion of integration measures which, if necessary, support the integration of refugees. With regard to the competences for the promotion of municipality development and the establishment of the European Social Fund, the main question to ask is whether it is possible to link this development to the voluntary acceptance of refugees.

Dependent on whether the European Union is able to exercise this competence, or if this could be brought about by an amendment of the primary legislation, the subsequent question would be the contextualisation and structure of the Integration and Development Fund. It should then be asked whether the objective can be realised within the framework of the existing funds, whereby, in particular, an expansion of the Asylum, Migration and Integration Fund (AMIF) seems conceivable. If the existing funds do not open up any possibilities for action, an independent fund should be created, the concrete legal form of which is examined and outlined in the expert opinion. This includes clarifying the type of funding as the direct, indirect or shared management of funds, and asking questions as to whether the municipalities can submit project proposals themselves or whether mediation by the Member State would always be required, and how the approaches of participatory stakeholders can be implemented in accordance with EU law.

B

GUIDELINES ON THE DIVISION OF POWERS UNDER EU LAW

According to the principle of conferral of powers, the European Union may only act if it has been expressly authorised to do so by the Member States (Article 5 (1) first sentence, TEU). Therefore, every action of the European Union requires a corresponding enabling provision in the primary legislation.¹ Consequently, the question is whether the establishment of the Development and Integration Fund can be based on the division of powers stipulated in the primary legislation. This assumes that the European Union has the competence to allocate funds both for the acceptance of refugees and for municipalities to develop their own projects.

I. ALLOCATION OF FUNDS FOR ACCEPTING REFUGEES

The allocation of funds for the voluntary acceptance of refugees could be based on the competence of the European Union in the area of asylum (Article 78 (1) TFEU) and immigration (Article 79 (1) and (2) TFEU). As the prerequisite for the allocation of funds should be the voluntary acceptance of refugees, this competence must support both the regulation of financial support and the voluntary acceptance of refugees. In this context, it is also important to take into account the margins for manoeuvre that municipalities have in relation to the European Union and the respective Member States when it comes to accepting refugees.

1. Financial support

Pursuant to Article 78 (1) TFEU, the European Union develops a common policy on asylum, subsidiary protection and temporary protection. The individual competences are then established by Article 78 (2) TFEU.² The powers for substantive asylum and refugee law (a to c) as well as regulations under procedural law (d to f) are derived from this. In the context of the allocation of funds, Article 78 (2) (f) is to be consulted as stipulating the competence for issuing standards concerning the conditions for the reception of appli-

cants for asylum or subsidiary protection. The inclusion of Article 80 TFEU shows that financial support measures can also be based on this legal foundation.³ Insofar as the accepting municipalities are to be granted funds for the voluntary acceptance of refugees by means of the Integration and Development Fund, a competence of the European Union can be derived for this from Article 78 (2) (f) TFEU.

2. Voluntary acceptance of refugees

The European Union must continue to have the competence to enable the voluntary acceptance of refugees. Such a competence ensues from Article 78 (2) (e) TFEU as the competence to establish criteria and mechanisms for determining the Member State responsible for examining an application for asylum or subsidiary protection. On this basis, the European Union legislator decides on the system of responsibility within the European Union⁴, which is determined according to the Dublin III Regulation⁵ in accordance with applicable law.

Pursuant to Article 17 (2) of the Dublin III Regulation, a Member State may, at any time, request another Member State to take charge of an asylum seeker on humanitarian grounds. In particular, this enables the decision concerning the voluntary acceptance of refugees to be made in the context of relocation programmes within the European Union. Furthermore, the decision regarding responsibility can be based on Article 17 (1) of the Dublin III Regulation (known as the “sovereignty clause”) which does not link this decision to the existence of certain preconditions. On the contrary, this is a discretionary provision which can be condensed in-

¹ Herdegen, *Europarecht*, 22nd ed. 2020, Article 5, mn. 16.

² Rossi, in Calliess/Ruffert, *EUV/AEUV*, 5th ed. 2016, Article 78 TFEU, mn. 10.

³ Weiß, in Streinz, *EUV/AEUV*, 3rd ed. 2018, Article 78 TFEU, mn. 32; Thym, in Grabitz/Nettesheim, *Das Recht der Europäischen Union*, status: 71st supplement, August 2020, Article 78 TFEU, mn. 43.

⁴ Thym, in Grabitz/Nettesheim, *Das Recht der Europäischen Union*, status: 71st supplement, August 2020, Article 78 TFEU, mn. 38; Kotzur, in Geiger/Khan/Kotzur, 6th ed. 2017, Article 78 TFEU, mn. 11; see Weiß, in Streinz, 3rd ed. 2018, Article 80 TFEU, mn. 2.

⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29 June 2013, p. 31.

to an obligation to accept.⁶ At the same time, the Dublin III Regulation does not preclude Member States from agreeing to accept refugees on a voluntary basis by virtue of national provisions. After all, the purpose of the Dublin III Regulation is to ensure that asylum seekers can access the asylum procedure and to prevent “refugee in orbit” situations from occurring within the European Union.⁷ However, the Dublin III Regulation is not intended to be used to lay down any final rules on the acceptance of refugees, nor is it intended to prevent humanitarian migration to the European Union. In Article 3, the Qualification Directive⁸ also allows for more favourable standards by the Member States. Therefore, from the perspective of European Union law, not only is it possible to regulate the voluntary acceptance of refugees by Member States, but this is actually already inherent in current law.

3. Municipalities as decision makers

Within the bounds of applicable law, Article 17 (1) of the Dublin III Regulation grants the Member States the right to apply the sovereignty clause outlined above. The responsibility for the decision on using the sovereignty clause within a Member State is governed by the respective national law and can therefore differ among the individual Member States. The same applies to the voluntary acceptance of refugees which is detached from the requirements of EU law. If, as is the case in the Federal Republic of Germany, for example,⁹ the national law does not allow local municipalities to voluntarily accept refugees from abroad, the incentive effect of the Integration and Development Fund would merely be to enable the municipalities to increasingly declare their willingness to accept refugees to the general government and thus persuade it to authorise voluntary acceptance.

By contrast, a direct incentive could be created if the municipalities themselves were authorised to make decisions on the voluntary acceptance of refugees. The question is whether such authorisation of the municipalities can be created by EU law. The competence specified in Article 78 (2) (d) TFEU includes the establishment of criteria and procedures to define the Member State responsible for examining

an application for asylum or subsidiary protection. Access to the sub-units of a Member State, such as local municipalities, is not covered by this competence, however, so it would not be possible, for example, to extend the sovereignty clause from Article 17 of the Dublin III Regulation from the Member State to the municipalities or to justify the municipalities’ competences beyond this under EU law. This is already indicated by the wording of the provision (“Member State”) and also by the fact that the decision concerning accessing and remaining in its territory is a fundamental national sovereign right,¹⁰ the ownership and exercise of which requires the quality of being a state.¹¹ At least from the point of view of the Federal Republic of Germany, this quality of being a state belongs to the federal states¹², but not to the municipalities as a part of the federal states under the law organising the structure and functioning of the organs of the state.¹³ With respect to the acceptance of refugees, this is expressed in Article 23 (1) of the German Residence Act (AufenthG) which enables acceptance by the federal states in agreement with the Federal Ministry of the Interior (Bundesinnenministerium, BMI), whereas there is no possibility of acceptance by the municipalities. Article 4 (2) TEU does nothing to change this either because it only protects regional and local self-government as part of the national identity of the Member States¹⁴ without establishing independent rights for local self-government units. If EU law is granted access to the municipalities, the primary legislation would have to be amended accordingly, and this would require the consent of all Member States of the European Union.

The same is ultimately true of the competence specified in Article 79 (2) (a) TFEU to regulate the conditions of entry and residence and to allow Member States to grant long-term visas and residence permits, including those for the purpose of family reunification. Although this competence also includes procedural law, the wording “by Member States” is primarily intended to exclude direct enforcement by supranational authorities.¹⁵ Indeed, the linking of territorial authorisation and national sovereignty argues here against perceiving this as a competence of the European Union to authorise municipalities to voluntarily accept refugees.

⁶ *Vollrath*, in BeckOK Migrations- und Integrationsrecht, Decker/Bader/Kothe, 7th edition, version of 01/01/2021, Article 17 of the Dublin III Regulation mn. 4; see *Heusch*, in Heusch/Haderlein/Schönenbroicher, *Das neue Asylrecht*, 1st ed. 2016, mn. 269.

⁷ See recital 5 of the Dublin III Regulation.

⁸ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ, L 337, p. 9.

⁹ The decision on using the sovereignty clause pursuant to Article 17 of the Dublin III Regulation concerns the German Federal Ministry of the Interior (BMI) or the Federal Office for Migration and Refugees (BAMF). In addition, Articles 22 and 23 of the German Residence Act (AufenthG) provide for the admission of refugees by the federal government (Articles 22, 23 (2) AufenthG) or by the federal states in agreement with the BMI (Article 23 (1) AufenthG).

¹⁰ *Verdross/Simma*, *Universelles Völkerrecht*, 3rd ed. 1984, Article 1210; *Herdegen*, *Völkerrecht*, 17th ed. 2018, Article 27, mn. 2; *Doehring*, *Völkerrecht*, 2nd ed. 2004, mn. 853

¹¹ *Kelsen*, *Allgemeine Staatslehre*, Studienausgabe der Originalausgabe 1925, 2019, p. 252.

¹² See only German Federal Constitutional Court (BVerfGE) 1, 14 (34); 36, 342 (360 et seq.); 60, 175 (207); 129, 108 (122).

¹³ BVerfGE 39, 96 (109); 86, 148 (215); 137, 108 (147); *Isensee*, *Idee und Gestalt des Föderalismus im Grundgesetz*, in *Isensee/Kirchhof*, *Handbuch des Staatsrechts*, 3rd ed. 2008, Article 126, mn. 75; *Dreier*, in *Dreier*, *Grundgesetz-Kommentar*, 3rd ed. 2015, Article 28, mn. 86.

¹⁴ *Puttler*, in *Calliess/Ruffert*, *EUV/AEUV*, 5th ed. 2016, Article 4 TEU, mn. 19.

¹⁵ *Thym*, in *Grabitz/Nettesheim*, *Das Recht der Europäischen Union*, status: 71st supplement, August 2020, Article 78 TFEU, mn. 28.

4. Interim conclusion: scope of competences in the area of asylum

Based on Article 78 (2) (f), the European Union is able to adopt standards on the conditions for the reception of applicants for asylum or subsidiary protection and—as follows from the interaction with Article 80 TFEU—create financial support measures, whereby these can be linked to the voluntary acceptance of refugees. Such voluntary acceptance of refugees by Member States is already possible in accordance with current law. Indeed, the responsibility for the decision concerning voluntary acceptance is determined in accordance with national law. Under the applicable law, the European Union does not have the competence to grant municipalities an independent right to voluntary acceptance of refugees. Therefore, an amendment of the primary legislation would be necessary in this respect. Alternatively, it is conceivable to continue allowing voluntary acceptance by the Member States themselves and to create indirect incentives through the Integration and Development Fund so that municipalities increasingly declare their willingness to accept refugees to the general government and thus persuade it to authorise voluntary acceptance.

II. ALLOCATION OF FUNDS FOR MUNICIPALITIES' OWN DEVELOPMENT PROJECTS

Competences concerning the allocation of funds for municipalities to develop their own projects can be derived from competences in the area of asylum and integration as well as from competences outside the area of integration. These are examined in more detail below.

1. Competences in the area of asylum

The competence under Article 78 (2) (f) TFEU to regulate standards on the conditions for the reception of applicants seeking asylum or subsidiary protection comes into consideration in the area of asylum and migration. As explained above (B. I. 1.), financial support measures can be based on this legal foundation. However, as is clear from the systematic position of the provision within the overall context of asylum and migration policy, these financial support measures must be directly related to the reception of refugees. Accordingly, Article 78 (2) (f) TFEU in particular authorises financial support measures by means of which the accompanying additional burdens resulting from the acceptance of refugees are to be compensated. However, the funds allocated to enable municipalities to develop their own projects, which is the aim of the Integration and Development Fund, are intended to be used for integration, and for migration and integration in a way that is completely detached from the dynamic overall development of an urban environment or neighbourhood in the social, economic, ecological or infrastructural sense. In this respect, this involves actions to promote integration and infrastructure policy that are not covered by the competence in the area of asylum.

2. Competences in the area of integration

Pursuant to Article 79 (4) TFEU the European Union has competence to carry out actions to support and coordinate within the meaning of Article 2 (5) TFEU in the area of integration.¹⁶ Determining the scope of this competence depends on how the underlying notion of integration is to be understood.

A) COMPETENCE TO SUPPORT AND COORDINATE

The competence to support and coordinate remains the exclusive responsibility of the Member States,¹⁷ to the exclusion of any harmonisation of the laws of the Member States.¹⁸ It ensues from this that the European Union can support the efforts of the Member States without pursuing its own policy.¹⁹ The competence only covers soft forms of action, which also include support funds.²⁰ Neither the Integration and Development Fund itself nor its concrete implementation have any impact on the harmonisation of legislation. Instead, the municipalities are to develop their own projects in stakeholder forums, while the European Union solely sets the eligibility criteria. Consequently, it is the Member States and, within them, the municipalities that pursue local integration policies and, in doing so, only receive financial support from the European Union, so that the Integration and Development Fund operates within the framework of the competence to support and coordinate.

B) UNDERSTANDING THE CONCEPT OF INTEGRATION

The fact that the integration fund should not just cover actions that qualify as direct integration measures requires an analysis of the concept of integration in Article 79 (4) TFEU. This is not defined precisely in the primary legislation, so an understanding of it must be gained through interpretation. Taking the wording as the starting point²¹ and bearing in mind the limitations²² of any interpretation, it is above all a systematic interpretation, in conformity with the law, that can illustrate how the term should be understood.

¹⁶ *Thym*, in Grabitz/Nettesheim, Das Recht der Europäischen Union, status: 62nd supplement July 2017, Article 79 TFEU, mn. 39; *Weber*, Migration im Vertrag von Lissabon, ZAR 2008, 55 (58).

¹⁷ *Fischer*, Der Europäische Verfassungsvertrag, 2005, p. 139; *Wuermeling*, Kalamität Kompetenz, EuR 2004, 216 (223).

¹⁸ *Kotzur*, in Geiger/Khan/Kotzur, EUV/AEUV, 6th ed. 2017, Article 79 TFEU, mn. 11; *Progin-Theuerkauf*, in von der Groeben/Schwarze/Hatje, Europäisches Unionsrecht, vol. 2, 7th ed. 2015, Article 79 TFEU, mn. 33.

¹⁹ *Rossi*, in Calliess/Ruffert, EUV/AEUV, 5th ed. 2016, Article 79 TFEU, mn. 33.

²⁰ *Dittrich*, in BeckOK Migrations- und Integrationsrecht, Decker/Bader/Kothe, 7th ed. 01/01/2021, Article 79 TFEU, mn. 18.

²¹ *Reimer*, Juristische Methodenlehre, 2nd ed. 2020, mn. 281.

²² European Court of Justice, case no. C-313/07, collection I 2008, 7909, mn. 44 – *Kirtuna*.

aa) Systematic interpretation

Systematically, Article 79 (4) TFEU falls within the context of asylum, subsidiary protection and temporary protection (Article 79 (4) TFEU) and migration (Article 79 (1) and (2) TFEU). This context suggests that, within the meaning of Article 79 (4) TFEU, the term “integration” refers to actions that arise as a consequence of granting asylum and immigration. This can also include measures that encourage the overcoming of integration barriers in the country of residence, i.e. in the respective Member State, including in the municipalities because integration, in the context of EU law, is understood to be a joint responsibility aimed at reaping the benefits of migration by creating favourable conditions for the economic, social, cultural and political participation of immigrants.²³ Consequently, the competence to support and coordinate also supports the municipalities’ development measures which have the effect of supporting the integration of people from a migrant background. However, a link to the area of asylum and migration is always required, so the respective measures must have a migration implication, at least indirectly. Therefore, based on systematic considerations, this competence does not cover development measures that are completely independent of this.

bb) Interpretation in conformity with the law

Further clarification of the actions covered by the competence to support and coordinate enables the concept of integration within the meaning of Article 79 (4) TFEU to be interpreted in conformity with the law²⁴. Regulation No 516/2014 (Specific Regulation)²⁵ was adopted on the basis of Articles 78 (2) and 79 (2) and (4) TFEU. Together with Regulation No 514/2014 (General Regulation)²⁶, this regulation established the Asylum, Migration and Integration Fund (AMIF) for the period from

2014 to 2020. According to recital 10 of the Specific Regulation, the fund should be used to provide targeted support of consistent strategies which are specifically designed to support the integration of third-country nationals at national, local and/or regional level, as appropriate. Recital 22 states that the fund should only be used to support specific actions that complement those financed under the European Social Fund. Thus, the recitals assume, in any case, that there is an indirect or even a direct link to migration and therefore to actions addressing the impacts of migration. Article 3 (1) of the Specific Regulation specifies that the general objective of the fund is to contribute to the efficient management of migration flows and to the implementation, strengthening and development of the common policy on asylum, subsidiary protection and temporary protection, and the common immigration policy. Article 3 (2) of the Regulation names the specific objectives of the fund, which, according to letter b) also includes the promotion of the effective integration of third-country nationals. Article 9 of the Regulation describes eligible actions to achieve this goal. It is clear here that integration is understood to be a task for the whole of society which takes place in different areas of life, and integration actions can address not only people with a migrant background, but also the receiving country and society as a whole. The actions mentioned also include, for instance, actions to promote acceptance by the receiving society (letter f) and to promote equality of access and equality of outcomes in dealings with public and private services (letter g). Eligible integration actions thus go beyond traditional integration measures, but they are all actions that address the special needs of third-country nationals. Actions which are completely detached from this and which exclusively serve the development of the municipality itself and therefore do not specifically promote the integration of third-country nationals, but rather benefit all citizens, are not provided for, however. Article 9 (1) second sentence of the Regulation underlines this by formulating the promotion of actions focusing on third-country nationals.

The Common Basic Principles for Immigrant Integration Policy adopted by the Justice and Home Affairs Council in 2004 describe integration at the start as a dynamic, two-way process of mutual accommodation by all immigrants and all residents in the Member States (CP 1). The integration factors specified are employment (CP 3), knowledge of the host society’s language, history, and institutions (CP 4) and education (CP 5) and thus integration actions that start with the third-country nationals themselves. CP 7 goes further, specifying a fundamental mechanism for integration as being the frequent interaction between immigrants and Member State citizens, promoted through shared forums, inter-cultural dialogue, education about immigrants and their cultures, and integration-friendly living conditions in urban environments. Consequently, CP 7 assumes that integration also depends on living conditions in the municipalities. Therefore, the basic principle offers a starting point for a

²³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: COM (2011) 455 final., para. 2. In this sense also, the communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 1 September 2005 — A common agenda for integration: a framework for the integration of third country nationals in the European Union COM (2005) 389 final.

²⁴ To verify its admissibility, see *Mayer*, *Das Recht der Europäischen Union*, status: 71st supplement, August 2020, Article 19 TEU, mn. 64. See, in this sense, European Court of Justice, case no. 48/75, collection 1976, 497 mn. 24/27 – *Royer*.

²⁵ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, OJ, L 150 p. 168, most recently amended by Commission Delegated Regulation (EU) No. 2020/445 of 15 October 2019, OJ, L 94, p. 1.

²⁶ Regulation (EU) No. 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, OJ, L 150, p. 112, most recently amended by Regulation (EU) No. 2020/1543 of the European Parliament and of the Council of 21 October 2020, OJ, L 356, p. 3.

broader understanding of the term which also includes urban development measures as integration actions. Precisely what is meant by “integration-friendly living conditions” is not specified by the basic principles. This therefore initially creates extensive room for manoeuvre. However, CP 7 should be considered within the overall context of the Common Basic Principles. This conveys the idea of integration-friendliness, which in turn assumes that third-country nationals may have special needs, the guarantee of which serves as an assessment standard. Therefore, Article 79 (4) TFEU does not cover development measures which are completely detached from this, even if the Common Basic Principles are applied.

C) INTERIM CONCLUSION: SCOPE OF COMPETENCES IN THE AREA OF INTEGRATION

The European Union’s competence to support and coordinate in the area of integration under Article 79 (4) TFEU can also be used as a basis for integration actions which—in accordance with the reciprocal nature of the integration process—are aimed at removing obstacles to integration in the country of residence. However, these actions must be at least indirectly connected to the integration of third-country nationals. Actions, including financial support, which merely serve the overall development of an urban environment or neighbourhood in the social, economic, ecological or infrastructural sense, without being at least indirectly connected to the integration of people with a migrant background, cannot be based on Article 79 (4) TFEU.

In line with the understanding underlying Article 9 of the Specific Regulation, such an indirect link at least requires a connection to third-country nationals living within the sphere of the action. This includes, for example, actions enabling reciprocal interaction between citizens of the municipality and third-country nationals such as the promotion of the infrastructure of school and early childhood educational institutions, cultural centres and meeting places as well as sports clubs in municipalities. Although these actions do not directly benefit third-country nationals alone, they do encourage a holistic approach to integration, as the reciprocal interaction between all citizens of the municipality creates a sense of togetherness while helping to remove any cultural boundaries. Other actions within the meaning of a holistic approach to integration but which no longer fall within the competence of Article 79 (4) TFEU because, although they benefit all citizens, they do not encourage reciprocal interaction or promote togetherness, include measures to develop transport infrastructures or projects to promote ecological transformation.

3. Competences outside the area of migration and integration

A competence of the European Union to allocate funds to enable municipalities to develop their own projects could be derived from the authorisation standards in Articles 175 et

seq. TFEU on the promotion of municipality development and from Article 162 TFEU as the authorisation for establishing a social fund.

A) COMPETENCES TO PROMOTE MUNICIPALITY DEVELOPMENT, ARTICLES 175 ET SEQ. TFEU

The authorising provisions in Articles 175 et seq. TFEU clarify Article 174 TFEU,²⁷ which, without itself justifying any competences, define as a general structural policy clause the objective of all actions based on it and thus set standards for interpreting the respective areas of competence.²⁸

It is clear from Article 714 TFEU that all actions based on Articles 175 et seq. must be aimed at strengthening the economic, social and territorial cohesion of the European Union (cf. Article 174 (1) TFEU). The cohesion objective anchored in Article 174 (2) and (3) is to be realised by means of the regional policy.²⁹ As the reference to the levels of development in paragraph 2 and the naming of individual areas with demographic handicaps in paragraph 3 make clear, the primary aim is to redress imbalances between the different levels of development in the regions³⁰. This applies in particular to the broadly formulated back-up competence anchored in Article 175 (3) TFEU for specific actions outside the fund.

An interpretation in conformity with the law confirms this view. In this sense, according to its purpose standardised in Article 2 of the Regulation which clarifies this more precisely,³¹ the purpose of the European Regional Development Fund (ERDF), which has so far been based on ERDF Regulation No 1301/2013, which is based on Articles 178 and 349 TFEU, is to redress the main regional imbalances. The same applies to the structural Cohesion Fund based on Article 177 (2) TFEU, which is intended to support investments in the areas of the environment and trans-European networks in the area of transport infrastructure, whereby for the MFF 2014-2020, according to Article 90 of the ESI Funds Regulation, only Member States with a lower GDP are eligible to receive support from the Cohesion Fund.

As is already apparent from the term “in particular” in Article 174 (2) TFEU, actions are also possible regardless of the respective region’s level of development. However, accord-

²⁷ *Puttler*, in Calliess/Ruffert, EUV/AEUV, 5th ed. 2016, Article 176 TFEU, mn. 8.

²⁸ Cf. *Magiera*, in Streinz, EUV/AEUV, 3rd ed. 2018, Article 174, mn. 12; *Bieber/Epiney/Haag/Kotzur*, Die Europäische Union, 14th ed. 2021, Article 30, mn. 3 for Article 175 (3) TFEU.

²⁹ *Puttler*, in Calliess/Ruffert, EUV/AEUV, 5th ed. 2016, Article 174 TFEU, mn. 10.

³⁰ *Bieber/Epiney/Haag/Kotzur*, Die Europäische Union, 14th ed. 2021, Article 30, mn. 3.

³¹ Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006, OJ 2013, L 347/289.

ing to the objective under Article 174 (1) TFEU, these actions must lead to the strengthening of economic, social and territorial cohesion.³² This involves increasing the intra-municipality and international competitiveness of economic sectors and regions and ensuring that, throughout the European Union, the highest possible standard of living is achieved and maintained³³ by implementing targeted actions for disadvantaged regions and economic sectors, and providing assistance for disadvantaged groups of people.³⁴

However, the Integration and Development Fund is not intended to target disadvantaged regions and economic sectors or disadvantaged groups of people but is simply based on the willingness of the municipality to accept refugees. Conversely, whether or not any disadvantages have actually been created by migration is irrelevant for the allocation of funds. At any rate, although it strictly links the allocation of funds to the voluntary acceptance of refugees and makes this a prerequisite for the allocation of funds, the Integration and Development Fund is not a structural policy measure but rather an asylum policy measure, and as such it cannot be based on Articles 175 et seq. TFEU. Therefore, Articles 175 et seq. TFEU are not to be taken into account if the voluntary admission of refugees is made a basic condition for the allocation of funds.

B) COMPETENCE TO ESTABLISH THE EUROPEAN SOCIAL FUND, ARTICLE 162 TFEU

In Article 162 TFEU, the European Union is authorised to establish a Social Fund (ESF) with the aim of rendering the employment of workers in the internal market easier and thereby contributing to raising the standard of living. Article 162 TFEU thus sets a framework within which the fund may be used.³⁵ The paraphrase makes it clear that, according to the wording, this is not an authorisation for shaping a comprehensive social policy, but an instrument of employment and labour market policy.³⁶

According to Article 9 of the ESI Funds Regulation 1303/2013, a wide range of objectives can, in principle, be supported by the ESF. This also includes, for example, investments in education, training and vocational education for skills and lifelong learning, and improving the institutional capacity of public authorities and stakeholders, and efficient public ad-

ministration.³⁷ For the MFF 2014-2020, the ESF was structured by Regulation (EU) No 1304/2013³⁸. According to Article 3 of the Regulation, investments, for instance, in the institutional capacity of public administrations, in the reduction or prevention of early school leaving or in the socio-economic integration of marginalised municipalities can also be financed by the ESF. The competence to establish the ESF is thus understood by the legislator in relatively broad terms.

However, so far, no integration measures have been mentioned by the ESF Regulation. This looks different in the proposal for the MFF 2021-2027. The ESF is to be expanded there and in future will operate under ESF+.³⁹ In Article 4 of the Regulation, the Commission's proposal also provides for the promotion of the socio-economic integration of third-country nationals. Long-term integration measures are to be promoted by the ESF+ in addition to the Asylum and Migration Fund.⁴⁰

Therefore, overall, the area of application of Article 162 TFEU is extremely broad.⁴¹ Article 162 TFEU is thus at least partially suitable as an authorising provision for the Integration and Development Fund as some of the areas covered by the ESF fall within the scope of the envisaged fund. However, a permanent link between the allocation of resources from the fund based on Article 162 TFEU and the voluntary admission of refugees is not permitted. This would inadmissibly turn the ESF into an instrument of asylum policy, which is not the intention of the primary legislation.

C) INTERIM CONCLUSION: SCOPE OF COMPETENCES OUTSIDE THE AREA OF ASYLUM AND INTEGRATION

The establishment of the Development and Integration Fund primarily as an asylum policy measure cannot be fully based on the competences outside of the area of asylum and integration. The competences to promote municipality development (Articles 175 et seq. TFEU) require disadvantaged regions and economic sectors or disadvantaged groups of people to be targeted. However, the fact that the funding depends solely on the voluntary admission of refugees is not covered by the authorising provisions. At least in part, however, Article 162 TFEU can serve as a competence basis inso-

³² On the need for such an alignment with the objective of Article 174 TFEU, see the European Court of Justice, case no. C-166/07, collection 2009, I–7135, mn. 48 et seq. – *Parlament/Rat*.

³³ *Bieber/Epiney/Haag/Kotzur*, Die Europäische Union, 14th ed. 2021, Article 30, mn. 6.

³⁴ *Kern/C. Eggers*, in *Grabitz/Hilf/Nettesheim*, 71st supplement, August 2020, Article 174 TFEU, mn. 25.

³⁵ *Puttler*, in *Calliess/Ruffert*, EUV/AEUUV, 5th ed. 2016, Article 162, mn. 2.

³⁶ *Puttler*, in *Calliess/Ruffert*, EUV/AEUUV, 5th ed. 2016, Article 162 TFEU, mn. 2; *Overkämping*, in *GSH*, EUV/AEUUV, introductory note to Articles 162–164 TFEU, mn. 6; *Häde*, in *Frankfurter Kommentar EUV/GRC/AEUUV*, 1st ed. 2017, Article 162 TFEU, mn. 5.

³⁷ Clarified in more detail for the ESF by Article 3 (1) (b) and (c) of the ESF Regulation (EU) No. 1304/2013

³⁸ Regulation (EU) No. 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006, OJ L 347, p. 470, OJ 2016 L 330 p. 8, most recently amended by Regulation (EU) 2018/1046 of the European Parliament and of the Council of 18 July 2018, OJ L 193 p. 1.

³⁹ European Commission, proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus (ESF+), COM (2018) 382 final and COM (2020) 447 final.

⁴⁰ European Commission, proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus (ESF+), COM (2018) 382 final, recital 20.

⁴¹ *Gassner*, in *Vedder/Heintschel von Heinegg*, *Europäisches Unionsrecht*, 2nd ed. 2018, Article 162 TFEU, mn. 5.

far as it covers the intended integration measures. However, the regulation does not allow a direct link between the allocation of funds and the voluntary acceptance of refugees as an asylum policy measure.

III. INTERIM CONCLUSION: POTENTIAL AND LIMITATIONS OF THE PRIMARY LEGISLATION

All things considered, the primary legislation authorises the European Union to allocate funds for the reception of refugees as well as for municipalities to develop their own projects which are at least indirectly related to the integration of third-country nationals. By contrast, the primary legislation does not cover actions which are completely independent of this and which only serve to promote the dynamic overall development of an urban environment or neighbourhood in the social, economic, ecological or infrastructural sense, but, at the same time, are linked to the voluntary acceptance of refugees to the extent that this is made a prerequisite for the allocation of funds. Therefore, the establishment of the Integration and Development Fund in its intended form would require a prior amendment to be made to the basic principles of EU law under the primary legislation. This would have to be formulated in such a way that it would enable asylum and structural policy measures to be connected with regard to the allocation of funds by the European Union.

C

STRUCTURE OF THE FUND

The question concerning the competence under EU law to create an Integration and Development Fund is followed by the question as to how the fund would be structured. In the following, we will discuss the extent to which an Integration and Development Fund can be connected to existing funds or whether an independent fund should, or even must, be created for this purpose. The European Union's funds are based on a directive which must follow the legislative procedure provided for in the primary legislation and secure the respective required majorities in the process.

I. CONNECTION TO EXISTING FUND STRUCTURES

The existing funds are currently being restructured. This is taking place at the same time as the definition of the new MFF 2021-2027. As the funds are linked to the budgeting process, they will be aligned after the MFF has been determined. Negotiations on the funds for the MFF 2021-2027 period have not yet been concluded, however, considerations for restructuring the funds are still taken into account below. The function of the coordinating ESI Funds Regulation is to be taken over by the new umbrella regulation⁴² which is to establish general rules for a total of seven funds. Out of the existing funds and those likely to be continued in the MFF 2021-2027, the main candidates are the Asylum, Migration and Integration Fund (AMIF), the European Regional Development Fund (ERDF) and the European Social Fund (ESF—known, in future, as the ESF+).

1. Asylum, Migration and Integration Fund (AMIF)

As already explained, the eligible integration actions under the AMIF go beyond traditional integration measures, but the funding is limited to actions targeting third-country na-

tionals. Actions linked to third-country nationals themselves can only be extended selectively and to a limited degree in accordance with (f) and (g) of Article 9 (1) of the AMIF Specific Regulation. The funding of actions that are detached from the focus on third-country nationals is not possible under the current perspective of the AMIF, in line with the above interpretation of the concept of integration under the primary legislation.

The AMIF thus operates within the established limits of Article 79 TFEU. Even if it does not completely fulfil these competences based on a broad understanding of integration, Article 9 of the Regulation could only be extended to funding measures that are detached from the focus on third-country nationals, in particular measures to promote the dynamic overall development of an urban environment or neighbourhood in the social, economic, environmental or infrastructural sense, if the authorisation under the primary legislation were amended accordingly.

For the MFF 2021-2027, the Commission's proposal initially envisaged a new Asylum and Migration Fund as the successor fund.⁴³ Integration should therefore no longer be explicitly included in the title of the new fund. Having said that, according to the explanatory memorandum of the proposal, it was still envisaged that integration actions could also be financed by the fund, but only actions promoting early integration. Actions promoting long-term integration would, on the other hand, be financed by the ERDF and the ESF+.⁴⁴ The specific targets are also stated more precisely in Article 3 of the Regulation, whereby Article 3 (2) (b) focuses on integration as a target, as does the AMIF Specific Regulation. Unlike the AMIF Specific Regulation, the Commission's proposal does not contain any subject-related chapters⁴⁵ and therefore no provisions comparable to Article 9 of the Specific Regulation. Recital no. 13 indicates a focus on measures "that address the needs of third-country nationals". Annex

⁴² European Commission, proposal for a Regulation of the European Parliament and of the Council laying down common provisions for the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund and the European Maritime and Fisheries Fund and laying down budgetary provisions for these funds and for the Asylum and Migration Fund, the Internal Security Fund and the instrument for financial support for border management and visa, COM (2018) 375 final.

⁴³ European Commission, proposal for a Regulation of the European Parliament and of the Council on the establishment of the Asylum and Migration Fund, COM (2018) 471 final.

⁴⁴ European Commission, proposal for a Regulation of the European Parliament and of the Council on the establishment of the Asylum and Migration Fund COM (2018) 471 final, p. 6 and recital No. 13 of the proposal.

⁴⁵ In Regulation No. 516/2014, this concerned chapters II, III and IV.

II, No. 2 (b) also mentions preparatory measures for the active participation of third-country nationals and their acceptance in the receiving society. The list in Annex III No. 3 specifies a few eligible actions. These do not go substantially beyond those previously mentioned in Article 3 of the AMIF Specific Regulation.

At first reading, the European Union suggested that the title “Asylum, Migration and Integration Fund” be retained.⁴⁶ According to the Parliament’s amendment, the integration objective in Article 3 also includes the social inclusion of third-country nationals and is supported “in addition to other EU funds”.⁴⁷ The European Council also spoke in favour of reinstating the term “integration” in the title of the fund. The recitals in the general approach of the Council adopted on 12 October 2020 provide for more detailed explanations about the integration actions supported by the AMIF to fund long-term integration measures through the ESF+, ERDF and EAFRD.⁴⁸ As things currently stand, the AMIF will continue to promote measures primarily aimed at third-country nationals.

Therefore, the possibility of financing integration actions will probably continue to be offered by the AMIF. In this context, the framework provided by Article 79 (4) TFEU could be further exploited within the meaning of a broader understanding of integration than is envisaged in the current plans. However, insofar as Articles 78 (2), 79 (2) and (4) TFEU remain the sole legal basis under the primary legislation for the AMIF Regulation, the latter must also remain within its framework. Therefore, funded actions always require at least an indirect link to third-country nationals. Actions that are detached from this cannot be funded through the additional application of further authorising provisions, especially those for structural development, as otherwise an asylum policy, which is not the intention, would be pursued through structural policy competences. Therefore, the envisaged form of an Integration and Development Fund can only be partially integrated into the AMIF.

2. European Social Fund (ESF or ESF+)

The area of application of Article 162 TFEU as the basis for establishing the ESF as an instrument of employment and labour market policy is extremely broad but does not include any measures to promote the dynamic overall development of an urban environment or neighbourhood in the social, economic, environmental or infrastructural sense. In its existing form, the ESF is not explicitly used to promote integration either.

⁴⁶ European Parliament legislative resolution of 13 March 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (COM (2018) 0471, T/2019/0175, first amendment).

⁴⁷ European Parliament legislative resolution of 13 March 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (COM (2018) 0471, T/2019/0175, 70th amendment).

⁴⁸ Council of the European Union, inter-institutional file 2018/0248 (COD), 11888/20, recitals 12a and 13.

However, for the 2021 to 2027 period, the ESF is to be expanded into the ESF+ and will also support the promotion of socio-economic integration of third-country nationals. Long-term integration measures are to be promoted by the ESF+ in addition to the AMIF. In this way, the ESF+ could certainly be suitable for supporting some of the actions planned for the Integration and Development Fund. These should always be linked to the purpose of the ESF as set out in Article 162 TFEU. Accordingly, integration and development measures can be supported to a certain extent by the ESF or ESF+, but, in view of the limitations of the primary legislation, they cannot be linked solely to the acceptance of refugees. Another prerequisite is that the measures are connected to employment and labour market policy.

3. European Regional Development Fund (ERDF)

The European Regional Development Fund (ERDF) serves to combat regional imbalances pursuant to Article 176 TFEU. The link to the backwardness of the region prevents the Integration and Development Fund from being extended in the envisaged form. If necessary, municipalities that fulfil the criteria of the ERDF could use the funds to finance actions which, at least indirectly, also benefit the promotion of integration.

According to the recitals of the current proposal⁴⁹, the ERDF should nevertheless also support long-term integration measures within the scope of the MFF 2021-2027. However, following the structure of competences of the primary legislation presented in detail above, this would, in principle, also have to remain focused on backward regions, as Article 176 TFEU only covers areas in which development is lagging behind and declining industrial regions. Thus, the ERDF only offers extremely limited possibilities for an Integration and Development Fund.

4. Interim conclusion

A comprehensive Integration and Development Fund cannot be linked to the existing structure of the funds as the existing funds can, at best, only partially support the envisaged measures.

II. ESTABLISHING AN INDEPENDENT INTEGRATION AND DEVELOPMENT FUND

Therefore, the Integration and Development Fund must be designed as an independent fund. In doing so, insofar as no changes are made to the primary legislation, the basic principles of the primary legislation should be drawn on as, ac-

⁴⁹ European Commission, proposal for a Regulation of the European Parliament and of the Council on the European Regional Development Fund and the Cohesion Fund, COM (2018) 372 final, recital 8.

According to the present results, this at least partially contains certain competences for establishing an Integration and Development Fund. With regard to the acceptance of refugees and the costs directly incurred for this, these include the competence in the area of asylum policy derived from Article 78 (2) TFEU in interaction with Article 80 TFEU relating to the allocation of funds for municipalities' own development projects, the competence to support and coordinate in the area of integration of Article 79 (4) TFEU, and the competence to establish the European Social Fund from Article 162 TFEU.

1. Amalgamating the funds

The funding opportunities resulting from this could be amalgamated into an independent Integration and Development Fund to facilitate access to funding for stakeholders, i.e., local civil society actors. In the primary legislation, this fund would then be based on a combination of the above-mentioned competences. There is nothing to indicate that such a combined use of competences would be inadmissible. The regulations under the primary legislation do not specify exactly how the various funds are to be structured. For the Structural Funds, Article 177 TFEU even explicitly provides for the possibility of grouping the funds together. Since 2014, the AMIF has been based on a combination of the asylum and integration competences of Articles 78 and 79 TFEU and has brought together previously independent funds (European Integration Fund, European Return Fund and European Refugee Fund). The bringing together of funds as provided for in the primary legislation is not unusual and is also exemplified by the ERDF and ESF+.⁵⁰

Therefore, in principle, it is possible to establish an independent Integration and Development Fund based on the corresponding provisions of the primary legislation. This would have to remain within the framework described so that, in particular, it would not be possible to make a direct link between the allocation of funds and the voluntary acceptance of refugees.

2. Administration and procedures

In this context, the primary legislation provisions on the administration and procedures of the funds, where these exist, would have to be observed. The primary legislation does not contain any such provisions for the area of asylum and integration policy. For the ESF, Article 163 (2) TFEU stipulates the participation of a committee composed of representatives of governments and workers' and employers' organisations, presided over by a member of the Commission. This committee would be integrated accordingly into the decision and planning structure for the allocation of resources from the Integration and Development Fund. According to the ex-

isting secondary legislation (see Article 25 of the ESF Regulation) and in practice, it has no decision-making or veto rights, but would merely deliver opinions that are not binding upon the Commission.⁵¹ The committee would be involved if resources were allocated through the Integration and Development Fund based on Article 162 TFEU. It would also be possible to expand the committee for the entire Integration and Development Fund and to include it consistently. Therefore, the committee's inclusion in the Integration and Development Fund is not an insurmountable obstacle.

3. Limitations of the fund

Consequently, based on the primary legislation in its current form, the establishment of an independent Integration and Development Fund is possible and feasible. However, it is not possible to combine competences to the effect that the allocation of funds based on Article 162 TFEU is linked to the acceptance of refugees, or to the effect that, on the basis of Article 79 (4) TFEU, resources are allocated which, in their use, are not at least indirectly linked to third-country nationals. The competences used for the individual components of the fund must remain within the framework set out in the primary legislation. Therefore, only those competence foundations, based on which the acceptance of refugees can be made into a condition for access to funding, can be amalgamated into one fund.

Development projects which, at least indirectly, serve the integration of third-country nationals can therefore be included. However, the fund should not be designed in such a way that a structural policy would be pursued in the form of an asylum policy instrument based on the competences for asylum and integration. Similarly, it is not possible for an asylum policy to be implemented by means of a fund based on the competence foundations for structural regional development.

If the primary legislation were amended to the effect that the European Union's competence for integration were expanded or a link between asylum and structural policy were made possible, a single Integration and Development Fund would be more genuinely feasible. In this case, the fund would be structured according to the competence that would then exist.

4. Interim conclusion

Within the existing limitations of the primary legislation or the limitations that would exist after an amendment was made, the intention behind the Integration and Development Fund can best be realised within the framework of an independent fund. Regarding the existing limitations of the primary legislation (B. III.), it should be taken into account

⁵⁰ See European Commission, proposal for a Regulation of the European Parliament and of the Council on the European Regional Development Fund and the Cohesion Fund, COM (2018) 372 final, recital 15.

⁵¹ *Puttler*, in *Calliess/Ruffert*, EUV/AEUV, 5th ed. 2016, Article 163 TFEU, mn. 2.

that development-related actions supported by the fund should also be at least indirectly aimed at the integration and needs of third-country nationals.

III. TYPES OF FUND MANAGEMENT

Taking the existing funds into account, it is still necessary to discuss how the allocation of funds would be structured.

1. Budgetary frameworks

According to Article 17 (1) fourth sentence TEU, the implementation of the EU budget is the responsibility of the Commission. According to the more specific⁵² Article 317 (1) TFEU, the EU's budget is basically implemented by the Commission together with the Member States in accordance with the Financial Rules applicable to the general budget of the Union,⁵³ which in turn are enacted by Article 322 TFEU. Article 62 (1) subparagraph 1 of the Financial Rules applicable to the general budget of the Union provides for three different types of fund management: 'direct management' (a), 'shared management' (b) and 'indirect management' (c). With the direct management method, the budget is managed by the Commission's departments or through executive agencies. Shared management means that the Commission's budget is managed by the Member States. In the case of indirect management, the budget is implemented by the institutions specified in Article 62 (1) subparagraph 1 (c) (i) to (viii). Article 62 (3) specifies a general limit to the delegation of budget management: Delegation to third parties is excluded where tasks involve a large measure of discretion for political decisions.

2. Structure of the existing fund

If we look at the funds that already exist and that have already been analysed, a comparative analysis of the ESF and the AMIF shows that the applicable management rules are different. According to Article 163 (1) TFEU, the Commission is responsible for managing the ESF. However, Article 163 TFEU only specifies the competence of the committee and not of the Union.⁵⁴ According to the specifications under the secondary legislation in Article 4 (7) of the ESI Funds Regulation, the ESF is managed by the shared management method. In the process, an extremely complex multi-stage admin-

istrative procedure is applied.⁵⁵ The responsibility of the Member States depends on the respective national distribution of competences.⁵⁶ Therefore, for the components of an independent Integration and Development Fund based on Article 162 TFEU, a shared management of funds would appear obvious. However, from a point of view based purely on the primary legislation, the direct management method would also seem possible.

For the AMIF, which is not specified in the primary legislation, no requirements exist concerning the type of fund management. Under the secondary legislation, it is mainly dealt with through shared management according to Article 22 of the General Regulation and Article 14 (4) second sentence of the Specific Regulation, and partly also through direct management according to Article 14 (4) first sentence of the Specific Regulation. Therefore, for the components of an independent Integration and Development Fund based on the integration competence, a shared management of funds would appear obvious. From a point of view based purely on the primary legislation, no requirements exist concerning the type of fund management.

3. Interim conclusion

All things considered, if it is established based on the existing primary legislation, the Integration and Development Fund could, depending on the structure under the secondary legislation, be implemented by means of both the shared management and the direct management methods.

If the primary legislation is amended to the extent that more extensive integration policy competence for the European Union is created, the responsibility for managing the funds could be defined in the primary legislation too. If it were not defined in the primary legislation, it could be freely structured in the secondary legislation.

IV. ACCESS TO FUNDING AND TAKING THE APPROACHES OF PARTICIPATORY STAKEHOLDERS INTO ACCOUNT

Finally, the question should be asked as to the extent to which, when allocating funds, the approaches of participatory stakeholders, within the meaning of including local civil society actors, can be taken into account. The organisation of access to funding from the Integration and Development Fund is, in principle, left open to the structure stipulated under secondary legislation. According to the definition of the type of fund management, the specific organisation of procedures is not determined by the primary legislation either. In this context, the national structures must be taken into account. The extent to which applications and programme

⁵² *Ruffert* in Calliess/Ruffert, EUV/AEUV, 5th ed. 2016, Article 17 TFEU, mn. 11; *Schmidt/Schmitt von Sydow* in von der Groeben/Schwarze/Hatje, Europäisches Unionsrecht, 7th ed. 2015, Article 17 TFEU, mn. 66.

⁵³ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No. 1296/2013, (EU) No. 1301/2013, (EU) No. 1303/2013, (EU) No. 1304/2013, (EU) No. 1309/2013, (EU) No. 1316/2013, (EU) No. 223/2014, (EU) No. 283/2014 and Decision No. 541/2014/EU and repealing Regulation (EU, Euratom) No. 966/2012, OJ. L 193 p. 1.

⁵⁴ *Kingreen*, in Grabitz/Nettesheim, Das Recht der Europäischen Union, status: 71st supplement, August 2020, Article 163 TFEU, mn. 1; *Ross*, in Schwarze/Becker/Hatje/Schoo, EU-Kommentar, Art. 163 TFEU mn. 2.

⁵⁵ *Ross*, in Schwarze/Becker/Hatje/Schoo, EU-Kommentar, Art. 163 TFEU mn. 2.

⁵⁶ *Kingreen*, in Grabitz/Nettesheim, Das Recht der Europäischen Union, status: 71st supplement, August 2020, Article 163 TFEU, mn. 2, 6, 7.

planning could be organised directly at municipality level or together by the municipalities and the EU authorities is, according to the administrative procedures of the Member States, primarily a question of the respective national structure of competences.⁵⁷ This is where procedural organisations established under secondary legislation reach their limits. In this area, the European Union does not have the competence to specify the details, as the organisation of administrative procedures is, in principle, the responsibility of the Member States.⁵⁸ Consequently, without the involvement of the Member States, it is not possible to specify a binding participatory stakeholder approach in EU law.

In the case of shared management, the organisation of procedures takes place in dialogue between the Commission and the Member State. In this context, the concrete structure, including the management of funds, is left up to the Member States. For example, Article 12 of the General Regulation establishing the AMIF specifies that every Member State, in accordance with its national regulations and practices, and subject to any applicable safety provisions, should organise a cooperative partnership with the authorities and institutions to be included in the preparation, implementation, monitoring and evaluation of the programme. Article 63 (3) of the Financial Rules applicable to the general budget of the Union also provides for the designation by Member States of management and control bodies for the shared management method. Within the context of the cooperation between the Member State and the EU Commission, extensive participatory procedures for preparing applications and projects can then be determined, which take into account the respective individual structures of the Member States. In this way, in line with Article 12 of the General Regulation establishing the AMIF, all stakeholders can be involved from the outset. These stakeholders also include the municipalities, local, national and international civil society organisations and institutions as well as government authorities.

V. INTERIM CONCLUSION: INDEPENDENT INTEGRATION AND DEVELOPMENT FUND

In the form outlined above, the Integration and Development Fund cannot be linked to existing and emerging fund structures. Instead, an independent Integration and Development Fund should be created, which combines the competence foundations for the ESF and the AMIF under the primary legislation. Such a fund would be feasible based on the current position of the primary legislation. However, the competence foundations under the primary legislation may not be combined so that they become the basis for unintended measures. Therefore, the individual competences

must stand alone and, in turn, preserve the competence framework under the primary legislation. For the concrete structure of the independent Integration and Development Fund, it follows that, with regard to the competence foundations for asylum and integration, a structural policy may not be pursued. In turn, the competence foundations for structural development conflict with asylum policy measures. Therefore, the actions required must at least be indirectly connected to the integration of third-country nationals. Actions beyond this would require an amendment to the primary legislation. Should such a primary law amendment be enacted, the concrete structure of the Integration and Development Fund would depend on the primary legislation provisions in force at the time. The way in which the Integration and Development Fund is to be managed can be stipulated under the secondary legislation. Implementation in the form of shared management would seem obvious. The approaches of participatory stakeholders for preparing applications and projects cannot be prescribed by EU law, but they can be specified within the framework of cooperation between the Member State and the EU Commission.

⁵⁷ Cf. *Kingreen*, in Grabitz/Nettesheim, Das Recht der Europäischen Union, status: 71st supplement, August 2020, Article 163 TFEU, mn. 6.

⁵⁸ Cf. *Epiney* in Bieber/Epiney/Haag/Kotzur, Die Europäische Union, 14th ed. 2021, Article 8, mn. 4 et seq.; *Ruffert*, in Calliess/Ruffert, EUV/AEUV, 5th ed. 2016, Article 291 TFEU, mn. 2; *Gellermann*, in Streinz, EUV/AEUV, Article 291 TFEU, mn. 3.

D

SUMMARY OF THE RESULTS

I. CURRENT POSSIBILITIES OF AN INTEGRATION AND DEVELOPMENT FUND

1. It is possible, in principle, to base the creation of an Integration and Development Fund on the competences of the European Union specified in the primary legislation. Specifications for the concrete structure of the fund can be derived from these.
2. The allocation of funds for the voluntary acceptance of refugees is based on Article 78 (2) (f), which allows for the creation of financial support measures. These could be linked to the voluntary acceptance of refugees to the extent that voluntary acceptance is a prerequisite for the allocation of funds.
3. Under EU law, the decision concerning the voluntary acceptance of refugees is the responsibility of the Member State itself, and national responsibility is determined according to national law. Therefore, the voluntary acceptance of refugees as a prerequisite for the allocation of funds must be based on a corresponding decision by the Member State itself.
4. The allocation of funds for individual development projects can be based on the European Union's competence to support and coordinate in the area of integration derived from Article 79 (4) TFEU. However, the prerequisite for this is that integration actions must actually be involved. This is only the case if the actions are at least indirectly connected to the integration of third-country nationals. Based on a broad understanding of the term, this includes not only concrete funding measures for third-country nationals, but also measures that encourage reciprocal interaction between citizens of the municipality and third-country nationals. However, measures relating purely to structural policy without any reference to integration no longer fall within the competence of Article 79 (4) TFEU.
5. A comprehensive Integration and Development Fund cannot be realised within the existing fund structure as the existing funds can at best only partially support the envisaged measures. It would therefore seem prefera-

ble to create an independent fund, which would remain within the limits of the existing primary legislation outlined above.

6. The way in which the Integration and Development Fund is managed, direct, shared or indirect management, can be stipulated under the secondary legislation, whereby the shared management method would appear to be the preferred method.
7. The taking into account of the approaches of participatory stake holders, within the meaning of including local civil society actors in the allocation of funds, can be implemented within the scope of the cooperation between the Member State and the EU Commission.

II. LIMITATIONS OF THE INTEGRATION AND DEVELOPMENT FUND

1. The Integration and Development Fund reaches its limits in the current primary legislation and in particular in the division of powers.
2. Due to the fact that, according to EU law, it is the Member States and not the municipalities that decide on the voluntary acceptance of refugees, the prerequisite for the allocation of funds cannot be decided upon by the municipalities themselves. Neither does the European Union have the competence to grant the municipalities an independent right to voluntary acceptance. Consequently, this path must be taken via the Member States.
3. The competence to support and coordinate stipulated in Article 79 (4) TFEU assumes that integration actions in connection with the integration of third-country nationals are involved. However, actions, including financial support, which merely serve the dynamic overall development of an urban environment or neighbourhood in the social, economic, ecological or infrastructural sense, without being indirectly connected to the integration of people with a migrant background, are not covered by Article 79 (4) TFEU. Consequently, on this basis, they cannot be supported by the Integration and Development Fund.

4. The competences to promote municipality development (Articles 175 et seq. TFEU) and to establish the Social Fund (Article 162 TFEU) cannot be used as an authorising provision for the Integration and Development Fund if they stipulate a direct link between the allocation of funds and the voluntary admission of refugees, as this would no longer be a structural policy measure but rather an asylum policy measure, which is not the intention behind the respective rules governing the competences. Therefore, making the voluntary acceptance of refugees a prerequisite for accessing funds is ruled out for municipalities' own development projects that are completely detached from integration.
5. It is not possible to make the approaches of participatory stakeholders binding through EU law. Therefore, a corresponding provision assumes that the respective Member State is willing to do this within the framework of the agreement with the EU Commission.

primary legislation to be made, which would enable the European Union to have access to the municipalities. Despite highlighting the municipalities in Article 4 (2) TEU, there are fundamental concerns about this, as the decision concerning access to national territory is a fundamental sovereign right. This assumes a concept of statehood which the municipalities simply do not have.

III. NECESSARY AMENDMENTS TO THE LAW

1. If the Integration and Development Fund is to be implemented in its intended version, it will be necessary to amend the primary legislation. The primary legislation will have to be designed so that funds can then also be linked to the voluntary acceptance of refugees even if there is no connection to the integration of third-party nationals. This would make it possible to allocate resources simply to fund the dynamic overall development of an urban environment or neighbourhood in the social, economic, ecological or infrastructural sense, while granting them would require the voluntary acceptance of refugees.
2. The primary legislation could be amended for example by expanding the competences in the area of asylum (Article 78 (2) TFEU) and integration (Article 79 (4) TFEU) to include another competence which could reasonably be provided for in an independent article. A concrete formulation would then still need to be developed. This would clearly state that in the event of the voluntary acceptance of refugees, resources could be granted for the municipalities' own development projects that are detached from the acceptance or integration of refugees. A corresponding amendment of the competences for structural development is conceivable in principle. However, as this ultimately involves an action related to asylum policy, a systematic categorisation in the area of asylum would be preferable.
3. In the course of this, provisions on the type of funding to be allocated could be created in the rules governing the competence. However, this would not be mandatory.
4. Basing the voluntary acceptance of refugees not on the decision of the Member State but on the municipalities themselves would also require an amendment to the

REFERENCES

- Dittrich, Lars**, in Decker, Andreas/Bader, Johann/Kothe, Peter, BeckOK Migrations- und Integrationsrecht, 6th edition, version of 01/10/2020.
- Doehring, Karl**, Völkerrecht, 2nd edition 2004.
- Dreier, Horst**, in Dreier, Horst, Grundgesetz-Kommentar, 3rd edition 2015.
- Epiney, Astrid**, in Bieber, Roland/Epiney, Astrid/Haag, Marcel/Kotzur, Markus, Die Europäische Union, 14th edition 2021.
- Fischer, Klemens**, Der Europäische Verfassungsvertrag, 2005.
- Gassner, Ulrich**, in Vedder, Christoph/Heintschel von Heinegg, Wolff, Europäisches Unionsrecht, 2nd edition 2018.
- Gellermann, Martin**, in Streinz, Rudolf, EUV/AEUV, 3rd edition 2018.
- Häde, Ulrich**, in Frankfurter Kommentar EUV/GRC/AEUV, 1st edition 2017.
- Herdegen, Matthias**, Völkerrecht, 17th edition 2018.
– Europarecht, 22nd edition 2020.
- Heusch, Andreas**, in Heusch, Andreas/Haderlein, Nicola/Schönenbroicher, Klaus, Das neue Asylrecht, 1st ed. 2016.
- Isensee, Josef**, in Isensee, Josef/Kirchhof, Paul, Handbuch des Staatsrechts, 3rd edition 2007.
- Kahl, Wolfgang**, in Calliess, Christian/ Ruffert, Matthias, EUV/AUEV, 5th edition 2016.
- Kelsen, Allgemeine Staatslehre**, Studienausgabe der Originalausgabe, 1925, 2019.
- Kern, Bastian/Christoph K. H. Eggers**, in Grabitz, Eberhard/Hilf, Meinhard/Nettesheim, Martin, Das Recht der Europäischen Union, status: 71st supplement, August 2020.
- Kingreen, Thorsten**, in Grabitz, Eberhard/Hilf, Meinhard/Nettesheim, Martin, Das Recht der Europäischen Union, status: 71st supplement, August 2020.
- Kotzur, Markus**, in Geiger, Rudolf/Khan, Daniel-Erasmus/Kotzur, Markus (ed.), EUV/AEUV, 6th edition 2017.
- Magiera, Siegfried**, in Streinz, Rudolf, EUV/AEUV, 3rd edition 2018.
- Mayer, Franz C.**, in Grabitz, Eberhard/Hilf, Meinhard/Nettesheim, Martin, Das Recht der Europäischen Union, status: 71st supplement, August 2020.
- Overkämping, Sabine**, in von der Groeben, Hans/Schwarze, Jürgen/Hatje, Armin (ed.), Europäisches Unionsrecht, 7th edition 2015.
- Progin-Theuerkauf, Sarah**, in von der Groeben, Hans/Schwarze, Jürgen/Hatje, Armin (ed.), Europäisches Unionsrecht, 7th edition 2015.
- Puttler, Adelheid**, in Calliess, Christian/Ruffert, Matthias, EUV/AUEV, 5th edition 2016.
- Reimer, Franz**, Juristische Methodenlehre, 2nd edition 2020.
- Ross, Friso**, in Schwarze, Jürgen/Becker, Ulrich/Hatje, Armin/Schoo, Johann, EU-Kommentar, 4th edition 2019.
- Rossi, Matthias**, in Calliess, Christian/Ruffert, Matthias, EUV/AUEV, 5th edition 2016.
- Ruffert, Matthias**, in Calliess, Christian/ Ruffert, Matthias, EUV/AUEV, 5th edition 2016.
- Schmidt, Florian/Schmitt von Sydow**, Helmut, in von der Groeben, Hans/Schwarze, Jürgen/Hatje, Armin (ed.), Europäisches Unionsrecht, 7th edition 2015.
- Thym, Daniel**, in Grabitz, Eberhard/ Hilf, Meinhard/ Nettesheim, Martin, Das Recht der Europäischen Union, status: 62nd supplement, July 2017.
- Thym, Daniel**, in Grabitz, Eberhard/ Hilf, Meinhard/ Nettesheim, Martin, Das Recht der Europäischen Union, status: 71st supplement, August 2020.
- Verdross, Alfred/Simma**, Bruno, Universelles Völkerrecht, 3rd edition 1984.
- Vollrath, Daniel**, in Decker, Andreas/Bader, Johann/Kothe, Peter, BeckOK Migrations- und Integrationsrecht, 6th edition, version of 01/10/2020.
- Weber, Albrecht**, Migration im Vertrag von Lissabon, ZAR 2008, pp. 55–58.
- Weiß, Wolfgang**, in Streinz, Rudolf, EUV/AEUV, 3rd edition 2018.
Wuermeling, Joachim, Kalamität Kompetenz: Zur Abgrenzung der Zuständigkeiten in dem Verfassungsentwurf des EU-Konvents, EuR 2004, pp. 216–229.

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THE INTEGRATION AND DEVELOPMENT FUND

Legal opinion on the feasibility of a European Union-funded Municipal Integration and Development Initiative



The integration and development fund can be based, subject to limitations, on the competences of the European Union stipulated under the primary legislation. The allocation of funds for the voluntary acceptance of refugees is based on Article 78 (2) (f) TFEU, which enables the creation of financial support measures. These measures can be linked to the voluntary acceptance of refugees as a prerequisite for the allocation of funds. Under EU law, the decision concerning the voluntary acceptance of refugees is the responsibility of the Member State itself, and national responsibility is determined according to national law.



The allocation of funds for urban development projects can be based on Article 79 (4) TFEU as long as these projects have at least an indirect link to the integration of third-country nationals. Alternatively, the allocation of funds can be based on Articles 175 et seq. TFEU and on Article 162 TFEU, but only if the allocation of funds is not linked to the voluntary acceptance of refugees. To enable the funds to be implemented genuinely, the primary legislation, such as Article 78 (2) TFEU and Article 79 (4) TFEU, must be amended so that funds can be linked to the voluntary acceptance of refugees, even if they are not connected to integration measures.



The European Union is not able to unilaterally determine the details of access to funding since the establishment of the administrative procedures is the responsibility of the Member States. Where the shared management of funds is concerned, this is determined in dialogue with the EU Commission. The exact structure is frequently left up to the Member States. Within the context of the cooperation between the Member State and the EU Commission, and in line with Article 12 of the General Regulation establishing the AMIF, towns and communities can be included in participatory procedures for preparing applications and projects extensively from the outset. However, the final binding decision on this is the responsibility of the Member State.