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### ANNEX

## **Neighbourhood, Development and International Cooperation Instrument (NDICI) – Global Europe**

### **Exceptional Assistance Measure regarding Myanmar**

#### **1. IDENTIFICATION**

Action:	Supporting the fight against impunity in Myanmar
Action Reference:	NDICI CR 2021 / 19
Cost:	EUR 1 000 000 (European Union (EU) contribution).
Budget Line:	14 02 03 10
Duration:	Maximum 18 months. The authorising officer responsible may decide to extend this period twice by a further period of up to six months, up to a total maximum duration of 30 months, under the conditions laid down in Article 23(6) of Regulation (EU) 2021/947.
Lead service:	FPI

#### **2. ACTION SUMMARY**

With a view to supporting the Independent Investigative Mechanism for Myanmar (IIMM) in effectively and efficiently fulfilling its mandate, this 18-month action aims to support the IIMM in enhancing its financial investigation capacity to advance and complement the Mechanism's criminal investigations of serious international crimes, including perpetrators and financiers. The action therefore aims to maximise the collection and analysis of financial information and share it with national, regional or international authorities to support investigations and legal proceedings. It will also contribute towards the development of good practice and standards in international criminal justice with regards to the use of financial information for criminal investigations.

#### **3. BACKGROUND AND RATIONALE**

##### **3.1 BACKGROUND**

Myanmar has suffered decades of repressive military rule, isolation, poverty and civil conflict. The brief period with a democratic government under Aung San Suu Kyi was marred when, following attacks by the Arakan Rohingya Salvation Army on security forces, a brutal army

operation in Rakhine State killed thousands and caused more than half a million Muslim Rohingyas to flee to neighbouring Bangladesh in August 2017 alone.

In March 2017, following several reports by United Nations (UN) authorities on atrocities committed in Rakhine state and against Rohingyas, the UN Human Rights Council created the International Independent Fact-Finding Mission in Myanmar (IIFMM). The IIFMM, in September 2018, reported findings of genocide, ethnic cleansing and gross violations, as well as sexual and gender-based violence in conflict. The IIFMM concluded that there was little to no domestic accountability available in Myanmar.

In the same month, the UN Human Rights Council responded to the IIFMM reporting by establishing the Independent Investigative Mechanism for Myanmar (IIMM). The IIMM is mandated to collect, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011 as well as to prepare files for independent and fair criminal proceedings.<sup>1</sup> It became operational in August 2019. It preserves the evidence collected by the IIFMM and is engaged in substantial further investigations.

On 1 February 2021, Myanmar's military once again seized power in a coup contesting the results of the 2020 general elections. After almost 10 years of democratic transition, the military capture of power has spiralled the country into political, social and economic turmoil. Popular protest has been met by deadly repression from the military junta. There are reports of numerous severe human rights abuses and crimes.

Since the coup, information shared with the IIMM about alleged human rights and criminal violations in Myanmar has increased exponentially. The Mechanism collects, processes and preserves this evidence. To advance and complement investigations related to serious international crimes, the IIMM also examines financial information that can facilitate the identification, tracing and lastly, accountability of perpetrators and their financiers in view of accountability. Highly specialised expertise and technology is urgently required for timely in-depth and state-of-the-art financial investigation to support the fight against impunity in Myanmar.

### **3.2 RATIONALE FOR CRISIS RESPONSE ACTIONS UNDER THE RAPID RESPONSE PILLAR OF THE NEIGHBOURHOOD, DEVELOPMENT AND INTERNATIONAL COOPERATION INSTRUMENT**

The military coup in February 2021 increased the risk of impunity for human rights violations and serious international crimes in Myanmar, constituting an exceptional and unforeseen situation in the sense of Article 4(4) of the NDICI Regulation. An adequate response cannot be provided under any other European Union Instrument due to the urgency with which the funds are required and due to available resources already being firmly committed.

Annex IV, paragraph 1, point (e) of Regulation (EU) 2021/947 specifically provides for the use of the NDICI rapid response pillar to (e) support international criminal tribunals and ad hoc national tribunals, truth and reconciliation commissions, transitional justice and other mechanisms for the legal settlement of human rights claims and the assertion and adjudication of property rights.

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<sup>1</sup> United Nations Human Right Council resolution 39/2 adopted on 27 September 2018 (A/HRC/RES/39/2)

### 3.3 RISKS AND ASSUMPTIONS

Risk	Level of risk	Impact	Risk Mitigation strategy
Challenging access to or inaccessible financial information. Financial evidence that is relevant to investigations may remain undetected or not possible to collect.	medium	medium	The required financial information and evidence will be gathered from existing centralised sources, individual financial institutions, open source investigations, and from documentary evidence such as transaction records and expert analytical reports.
Large volumes of data that will be generated may be challenging to be processed and analysed efficiently.	medium	medium	Specific analytical tools will be used to assist in processing and analysing large volumes of complex financial data. Collection and investigation plans will be developed for large volumes of financial data that require processing and analysis. A forensic accounting expert is planned to be recruited to translate complex financial transactions and data into reports as part of the investigations.
Delayed or a lack of legal cooperation from national authorities, national companies and international companies could allow perpetrators of serious international crimes and violations of international law committed in Myanmar to continue to evade accountability through undetected international financial transactions.	medium	medium	Legal cooperation will be sought from various national authorities, national companies, international companies and relevant regional organisations to facilitate investigations, including financial investigations, based on lessons learned and best practices from other international accountability mechanisms on the facilitation of legal cooperation from national authorities and international standards on business and human rights/responsible business conduct.
The COVID-19 situation delays activities and prevents the deployment of staff (lockdowns, restrictions).	low	low	Appropriate precautionary measures will be taken by the implementing partner according to pre-defined operating procedure and reliance on remote working arrangements.

## **4. OBJECTIVES**

### **4.1 OVERALL OBJECTIVE**

The overall objective of the action is to support accountability for human rights violations and serious international crimes in Myanmar through the Independent Investigative Mechanism for Myanmar.

### **4.2 SPECIFIC OBJECTIVES**

- 4.2.1 To enhance the IIMM's capacities to collect evidence and investigate financial information;
- 4.2.2 To contribute to sharing of relevant financial information with national, regional or international authorities in view of potential international legal proceedings;
- 4.2.3 To advance the development of good practice and standards in international criminal justice with regards to the use of financial information for criminal investigations.

## **5. ACTION COMPONENTS AND EXPECTED RESULTS**

This measure is articulated around the above-mentioned specific objectives.

**The main expected results/outcomes include:**

**Expected Result (1):** Enhanced capabilities and capacities for the collection, analysis and preservation of financial information for the purpose of investigating the most serious international crimes and violations of international law committed in Myanmar.

Activities (indicative):

- 5.1.1 To develop a financial investigation strategy for the Mechanism as part of its overall investigation strategy;
- 5.1.2 To increase capacities and human resources for the collection, analysis and preservation of financial information;
- 5.1.3 To enhance the Mechanism's capacities through the procurement of specialised state-of-the-art financial investigation technology.

**Expected Result (2):** Enhanced cooperation and information-sharing with national, regional and international authorities to support investigations and legal proceedings according to the Mechanism's mandate.

Activities (indicative):

- 5.2.1 To establish a structured and systematic approach to sharing of financial information and data for criminal investigations of information in the possession of the Mechanisms with relevant authorities;
- 5.2.2 To share relevant financial information with national, regional and international authorities to support investigations and legal proceedings according to the Mechanism's mandate.

**Expected Result (3):** Development and advancement of good practice and standards in international criminal justice with regards to financial investigations methodologies.

Activities (indicative):

- 5.3.1 To develop protocols and procedures on financial investigation methodologies in accordance with relevant international standards;
- 5.3.2 To create a common understanding of financial investigation methodologies across the Mechanism through trainings and technical support to personnel as required for implementation of the Mechanism’s financial investigation strategy.

## **6. IMPLEMENTATION**

### **6.1 IMPLEMENTATION MODALITIES**

The Commission will ensure that the appropriate EU rules and procedures for providing financing to third parties are respected, including review procedures, where appropriate, and compliance of the action with EU restrictive measures<sup>2</sup>.

#### **6.1.1 Indirect management with an international organisation**

This action may be implemented in indirect management with the United Nations Secretariat. This implementation entails objectives and activities provided in sections 4 and 5. The envisaged entity has been selected as it administers the Independent Investigative Mechanism for Myanmar and is therefore mandated to act as the IIMM’s administrative and financial intermediary.

The entrusted international organisation identified above is currently undergoing the ex-ante assessment of its systems and procedures for pillars 4 and 5. This assessment is expected to be finalised by 31 December 2021. In the meantime, contractual clauses will be included in the agreement signed with the United Nations entity. Supervisory measures could also be necessary depending on the results of the ex-ante assessment.

### **6.2 INDICATIVE BUDGET**

The total European Union contribution under this Financing Decision **will not exceed EUR 1 000 000**. A breakdown among components is provided hereunder, and is indicative.

#### **Indicative budget breakdown**

<b>Components</b>	<b>EU contribution (amount in EUR)</b>	<b>Indicative third party contribution, in currency identified</b>
Component 1: ‘Supporting the fight against impunity in Myanmar’ composed of		
6.1.1 – Indirect management with United Nations Secretariat	1 000 000	N.A.

<sup>2</sup> [www.sanctionsmap.eu](http://www.sanctionsmap.eu) Please note that the sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy between the published legal acts and the updates on the website, it is the OJ version that prevails.

Total	1 000 000	0
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### **6.3 ORGANISATIONAL SET-UP AND RESPONSIBILITIES**

The action shall be implemented under indirect management. It will be devolved and sub-delegated to the **European Union Delegation in Myanmar**, with the support of the Commission for the conclusion of the contracts implementing the action.

### **6.4 PERFORMANCE AND RESULTS MONITORING AND REPORTING**

The day-to-day technical and financial monitoring of the implementation of this action will be a continuous process and part of the implementing partner's responsibilities. To this aim, the implementing partner shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular progress reports (not less than annual) and final report. Each report shall provide an accurate account of implementation of the action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (outputs and outcomes) as measured by corresponding indicators, using as reference the Logframe matrix. The report shall be laid out in such a way as to allow monitoring of the means envisaged and employed and of the budget details for the action. The final report, narrative and financial, will cover the entire period of the action implementation.

The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

### **6.5 EVALUATION**

Having regard to the nature of the action, an evaluation will not be carried out for this action or its components.

The Commission may, during implementation, decide to undertake such an evaluation for duly justified reasons either on its own decision or on the initiative of the partner.

The financing of the evaluation shall be covered by another measure constituting a financing decision.

### **6.6 AUDIT**

Without prejudice to the obligations applicable to contracts concluded for the implementation of this action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments for one or several contracts or agreements.

The financing of the audit shall be covered by another measure constituting a financing decision.

### **6.7 COMMUNICATION AND VISIBILITY**

Communication and visibility of the EU is a legal obligation for all external actions funded by the EU.

This action shall contain communication and visibility measures which shall be based on a specific Communication and Visibility Plan of the Action, to be elaborated at the start of implementation.

In terms of legal obligations on communication and visibility, the measures shall be implemented by the Commission, the partner country, contractors, grant beneficiaries and/or entrusted entities. Appropriate contractual obligations shall be included in, respectively, the financing agreement, procurement and grant contracts, and delegation agreements.

The Communication and Visibility Requirements for European Union External Action (or any succeeding document) shall be used to establish the Communication and Visibility Plan of the Action and the appropriate contractual obligations.

## **7. COMPLEMENTARITY, COORDINATION AND FOLLOW-UP**

This measure will ensure complementarity with other EU-funded efforts in the field of reconciliation and transitional justice and, in particular, its support to ‘Helping Rohingya refugees be aware of and pursue their legal rights’<sup>3</sup>. Where possible, synergies will be sought with other EU-funded actions in support of Rohingya refugees including ‘Adolescents and youth as agents of change for peace in Rohingya refugee camps and host community: Phase 2’<sup>4</sup>, as well as ‘Building Rohingya refugee and host community resilience in Cox's Bazar’<sup>5</sup>.

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<sup>3</sup> Commission Implementing Decision C(2021) 6114 final of 18 August 2021

<sup>4</sup> Commission Implementing Decision C(2020) 2760 final of 30 April 2020

<sup>5</sup> Commission Implementing Decision C(2018) 6711 final of 17 October 2018