Joint CSO policy recommendations for the DAC’s Temporary Working Group on ODA eligibility of migration-related activities

With this submission, civil society organisations\(^1\) share their views and recommendations to feed into the work of the OECD Development Assistance Committee (DAC)’s Temporary Working Group (TWG) on ODA eligibility of migration-related activities. These build on previous CSO contributions to discussions on the DAC’s reporting code on the Facilitation of safe, orderly, regular and responsible migration (15190)\(^2\) and focus on the key areas the TWG has identified as particularly challenging when defining ODA-eligibility criteria, i.e. addressing the root causes of irregular migration; return and reintegration programmes; countering irregular migration; making financing conditional on migration control outcomes; and engaging with diaspora.\(^3\) The submission also includes recommendations in terms of reporting and monitoring requirements.

In the face of increasing interlinkages between ODA and migration policies on the part of some donors, we believe the DAC has a responsibility to ensure that ODA spent on migration-related programmes fully complies with the ODA definition and does no harm to the rights and safety of people on the move. In this regard, the work of the DAC Temporary Working Group on ODA and Migration (TWG) set up in 2020 is critical to develop clear and detailed ODA eligibility rules for migration-related expenditures.

GENERAL CRITERIA

To help determine the ODA eligibility of any migration-related activity, we recommend the DAC to agree on a list of general criteria building on the following points:

- **What purpose?** Only activities whose primary objective is to promote the economic development and welfare of developing countries can qualify as ODA, as per the OECD’s official definition. We recommend to further clarify that ODA should be used exclusively for the advancement of the development objectives of developing countries, as stated in the 15190 purpose code,\(^4\) and that ODA should not be used as

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\(^1\) CSOs endorsing this submission are listed at the end of this paper.


a vehicle to promote providers’ migration interest, similarly to the DAC’s statement
regarding security interests at its 2016 High Level Meeting.5

● Who benefits? In line with the ODA ineligibility of support to military actors and of
military equipment and materials, all migration-related activities involving military
actors, security services and border police or the militarization of borders should be
excluded from ODA.

● Whose priorities? Activities must comply with the principle of democratic country
ownership, which is a cornerstone of the development effectiveness agenda, to which
DAC donors have committed. Only actions supporting the interest and capacity of
developing countries can be counted as ODA, rather than actions which donor
countries design and implement for their own interest.

● What conditions? Activities whose support is conditioned upon partner country
cooperation on restricting mobility or on the acceptance of return of migrants should
be excluded from ODA. Migration conditionality is transactional in nature and does not
promote a global good. Given the high risk of human rights abuse in migration-related
activities, donors should pay particular attention to human rights risks and ensure
donor-backed projects assist and protect migrants and victims of trafficking and do not
criminalize them. Human rights are international legal obligations on the part of all
governments, as such they are not conditions, and should not be used to condition aid,
except in extreme situations mandated by international human rights bodies.

SUGGESTED LIST OF ODA-ELIGIBLE AND NON-ODA ELIGIBLE ACTIVITIES

1. Addressing the root causes of irregular migration

We recommend avoiding the use of the expression “addressing the root causes of irregular
migration” in DAC documents. The need for development cooperation to address a cause
implies that the consequence – in this case migration – is negative for development. That is
not a fact-based approach to migration. Researchers in the field of migration and development
broadly agree that migration – regardless whether being qualified as regular or irregular –
generally brings both positive and negative effects for the person migrating as well as for the
places of origin, transit and destination. Further, this approach broadly fails to distinguish the
status of migrants in countries of destination (often the donor countries) and countries of
origin, where they are often still ‘regular’. This confusion invites projects which promote
donors’ internal objectives, at the expense of the interest of developing countries.

Specific ODA eligibility criteria are not necessary for activities aimed at “addressing root
causes”. These are not a separate sector, but rather key development and humanitarian
challenges such as conflicts, fragility, marginalisation, inequality and discrimination, food
insecurity, environmental degradation and climate change. Actions to address them are
already covered by the current ODA definition and eligibility criteria.

5 The DAC’s 2016 HLM Communiqué stated that ‘Development co-operation should not be used as a vehicle to promote the
The current DAC purpose code on Facilitation of safe, orderly, regular and responsible migration says: “Activities addressing the root causes of forced displacement and irregular migration should not be coded here, but under their relevant sector of intervention.” This implies that from a development perspective there is no need for specific eligibility criteria for costs aimed at “addressing root causes”.

It should be made clear in the criteria that the purpose of development cooperation should never be limiting migration. ODA eligibility does not depend on whether drivers of migration - regardless if qualified as regular or irregular - are negative (such as conflict, poverty, inequality, climate and environmental change) or positive (such as the search for opportunities to study, work or join loved ones). ODA eligibility should be based on developing countries’ interest in improving good governance, increasing development, and promoting access to varied services in their countries - all activities which focus on development outcomes, be that by strengthening positive or preventing negative development outcomes of migration.

**Suggested list of ODA-eligible/non-eligible activities**

**ODA-eligible activities:**
- As explained above, lists of eligible activities could include any variety of development activities where migration and development research has found evidence of causation between a migration-related activity and positive development outcomes. Migration-related activities aimed at and measured by their impact on the economic development and welfare of developing countries fall within the ODA eligibility criteria.
- Activities to enhance developing countries’ capacity to incorporate a rights-based approach to a migration dimension within the design and implementation of their development strategies and other public policies;

**Non-ODA eligible activities:**
- Activities measured by their effect on limiting migration, such as interception of boats, patrols to prohibit travel (as well as providing the equipment or training for such activities) are ineligible costs.
- A root cause is structural and distinct from immediate causes. The clarification of eligibility criteria should make clear that activities aimed at preventing migration from happening are not ODA eligible activities. Regardless of whether donors interpret counteracting immediate causes of migration as “addressing root causes”.

**2. Returns and reintegration**

While assistance for voluntary, safe and dignified return and reintegration for migrants living in a developing country and wanting to go back to their country of origin could be considered ODA-eligible, donors should never use ODA as a way to further externalise their own borders to developing countries, and the DAC should consider a set of criteria to mitigate this risk.

**Returns** can take place in many different contexts and circumstances, which have significant impact on their classifications. Making a clear delineation between forced and voluntary returns can be challenging, but the IOM’s definition of the voluntariness of the decision can
be helpful, and is based on (a) freedom of choice, which is defined as the absence of physical or psychological pressure to enrol in an assisted voluntary return and reintegration (AVRR) programme; and (b) an informed decision, which requires the availability of timely, unbiased and reliable information upon which to base the decision.\(^6\)

**Forced returns** are negative events that do not support development goals, designed and executed to promote the returning country’s internal migration policies and laws. Further, some forced returns can put the returnees at risk, or result in secondary displacement and instability. At a minimum, it is critical that support for forced returns should never be reported as ODA. The existing reporting code 15190 allows for assistance to migrants voluntarily returning to their country of origin from another developing country, DAC rules must however mitigate the risk that some donors could use this to further externalise their borders to partner countries, which we strongly oppose. At a minimum, and in line with the language around “safe, informed and voluntary return”, it is essential to ensure aid is not being used to support returns from countries that do not fully implement the 1951 Refugee Convention, since this would not guarantee that the principle of *non-refoulement* is respected and could thus result in ODA being used to back violations of international law.

To IOM, **reintegration** can be considered sustainable - and successful - when it achieves the psychosocial well-being and personal safety and security of the returnees, their social inclusion and stability within their communities in the country of origin, and their economic empowerment. Support for the reintegration of migrants voluntarily returning from one developing country to their country of origin could be ODA-eligible if it is used for programmes that directly benefit returnees, their communities and the society as a whole through an integrated and comprehensive approach. Such activities should be reported under the appropriate sector code (e.g. code 32130 for support to SMEs, or code 311 for support to agricultural activities), as according to the IOM and the European Commission, reintegration support is better when it is provided in a whole-of-government approach and not in one-time payments.\(^7\) Cash assistance provided for the reintegration of migrants voluntarily returning from one developing country to another could be reported under the code 15190. As per DAC rules, costs related to refugees and migrants’ integration in donor countries are not ODA-eligible.

While we understand that assistance provided for the voluntary return and reintegration of migrants from donor countries to developing countries is currently eligible under DAC rule and can be reported as in-donor refugee costs (IDRC), we reiterate our position expressed in 2017 when IDRC rules were revised that we believe such costs should not be ODA-eligible, as they pertain to donors’ own migration policies.

**Suggested list of ODA-eligible/non eligible activities**

**ODA-eligible activities:** *(the examples below only apply to assistance to voluntary, safe and dignified returns and reintegration from one developing country to the country of origin)*

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\(^6\) [https://publications.iom.int/system/files/pdf/module_1.pdf](https://publications.iom.int/system/files/pdf/module_1.pdf)

- Support to activities to assist voluntary, safe and dignified returns and reintegration from one developing country to the country of origin.
- Support for reintegration programmes that are designed and implemented in a gender- and age-responsive manner and that reflect both the individual migrant and local community’s needs, that address the socio-cultural and economic vulnerabilities of the returnees and allow them to secure sustainable employment, and that are aligned with long-term structural development planning to maximise the benefits and the sustainability of the programmes in the country of origin.
- Support for assessments of the returnees’ personal situation and identification of risks and needs arising from the return project, in particular when they take into account specific measures for target group categories, such as minors, women, people with disabilities, victims of human trafficking.
- Support for the provision of awareness-raising campaigns providing counselling on voluntary return and reintegration programs' options in the host (developing) country and of actor-specific training programs (for the staff, law enforcement agencies, health care personnel) for systematic identification of vulnerable situations – especially in the case of victims of trafficking.
- Support for ensuring a minimum period of pre-departure assistance and preparation in host (developing) countries considering the best interest and the needs of the voluntary returnees – especially in case of vulnerable situations - with information shared in a way that is reliable, up-to-date, and provided in a language comprehensible for the migrant.
- In the return and reintegration process, support for the inclusion of the family, relatives, and communities more systematically as a way of fostering the sustainability of the programs.
- Support for the development of appropriate mechanisms to strengthen and monitor the protection of fundamental rights of migrants in the whole process and grant legal status to migrants who cannot return to their country of origin.
- Support for provision of post-arrival assistance, including, for instance, reception at the airport, safe accommodation, medical/psychosocial check-up and treatment and secondary transportation. Such support must include special provisions to accompany vulnerable and most marginalised categories – children, victims of trafficking, persons with disabilities – in the reintegration process, and ensure that migrant privacy is respected by putting in place strict safeguards for handling the personal data of programs’ beneficiaries, taking all reasonable and necessary precautions to preserve confidentiality.
- Activities that improve reception and reintegration services with the view to enable countries of origin to benefit from the skills and assets migrants have acquired abroad.
- Activities that provide reintegration support in the form of start-up grants, access to vocational training, or job placement. Reintegration grants should be allocated depending on the living standards of the country of return and the level of vulnerability of the returnees and should be flexible and provided through an integrated approach.
- Support to facilitate the creation of structured network dialogues, fora, platforms to ensure that beneficiaries of the reintegration programs can share their experiences, provide information and re-build social cohesion in and within the local community.
- Activities that ensure a multi-sector and comprehensive response in the reintegration programs, which aim at improving general living conditions in the country of origin, for
instance, by including economic and educational opportunities, access to basic services, social support schemes through the implementation of local development policies and programmes.

- Support to regional and local CSOs’ participation in coordination and information exchange and to enable a structured and transparent dialogue with them in order to facilitate their involvement in the design, implementation and monitoring of reintegration projects, raising awareness about the dangers of smuggling, benefits of regular migration, jobs opportunities abroad, and ensuring and monitoring the respect of the human rights and dignity of migrants and returnees.

- Activities that aim to strengthen developing countries’ capacity to ensure birth registration for the prevention of statelessness.

**Non-ODA eligible activities:**

- Activities supporting forced returns. Returns are forced not only when there is the use of brutal force, but also when returns are made inherently coercive and when the environment is made hostile for migrants and asylum seekers.

- Activities supporting returns from countries that do not recognise the principle of non-refoulement. This includes activities that facilitate the expedition of border procedure lacking tailored assessment of the asylum application and that facilitate collective expulsions and returns to a risk of serious human rights violations (in violation of the principle of non-refoulement).

- Support for border management in donor countries.

- Activities carried out with the intention of externalising donor country obligations under the international right to asylum, whether for forced or voluntary returns.

- Activities that facilitate arbitrary detentions of migrants and asylum seekers lacking legal status to remain in the host country.

- Support for developing mechanisms to ‘incentivise’ cooperation on return between the host and country of origin.

- Activities that focus on border security and control measures with the aim to increase returns.

- Activities that limit and/or deny access to legal remedies for migrants and asylum-seekers whose application has been rejected.

3. **Countering irregular migration** (e.g. support for border management, fight against migrant smuggling and fight against trafficking in human beings)

No fixed definition or universally accepted definition of “irregular migration” exists. It is used to describe cross-border movements of people without a regular permission to enter a country or a situation of people staying without – or overstaying the period of - valid visa or residence permit. Thus, the irregularity both in reference to people and movement relates directly to national border- and immigration policies, i.e. the absence of regular status or permission of entry. Changes in policies, regulations and laws can likewise impact people’s administrative and legal status, sometimes arbitrarily. While there is no single instrument or norm regulating state’s responsibilities towards migrants, all states have obligations towards migrants deriving from human rights conventions. Irregularity often renders people more at
risk of violations of their rights. Structural factors such as a lack of regular pathways for migration and the deterrence policies of states force refugees and migrants into precarious situations and create particular vulnerabilities.

The policy approach to irregular movements is increasingly securitized and aims at restricting and controlling mobility. The accompanying focus on strengthening border control measures along migratory routes and intensifying actions against migrant smuggling comes with a number of human rights concerns. Growing evidence indicates that anti-smuggling measures and hardening of borders unintendedly incentivise smugglers to use more precarious routes and contribute to increased vulnerabilities of those on the move. Secondly, the securitization of borders impedes regional mobility (e.g. cross-border trade). This is particularly problematic in regions where mobility is closely associated with access to livelihoods and development opportunities. An example of this is in West Africa, notably in ECOWAS, where promoting regional free movement of persons through regional and continental frameworks is key to the long-term development of West African countries.

There is growing understanding among donors, developing countries and NGOs alike, that many developing countries have no interest in criminalising forms of migration or reducing the mobility of their own citizens. The efforts to stop irregular migration is motivated by donors’ domestic interests, and defined according to donors’ legal criteria of who may be considered ‘regular’ when arriving at their borders.

Donors should not use ODA to promote their domestic migration policy objectives. As OECD DAC High Level Meeting Communiqué from February 2016 states “Development co-operation should not be used as a vehicle to promote the provider’s security interests”, the same is applicable when it comes to provider’s migration interests: Development co-operation should not be used as a vehicle to promote the provider’s migration interests. In regards to countering irregular migration, ODA should therefore not be distributed based on a potential future arrival in a donor country. We urge the OECD DAC secretariat to employ extreme caution when discussing irregular migration and to avoid using the term as a catch phrase to promote donors’ political interests. This is rarely in the interest of developing countries.

ODA should never be used to illegalize, stigmatize or undermine the rights of refugees and migrants. This is incompatible with ODA’s central purpose of poverty reduction and may harm the very people it should be supporting. Focusing on countering and curtailing irregular migration as part of development cooperation entails not only the risk of diverting focus from development objectives, it is also potentially counterproductive to development outcomes. ODA should not be used to fund securitized border management-related projects and must always be guided by the “do no harm” principle.

**Suggested list of ODA-eligible/non-eligible activities**

**ODA-eligible activities (all activities mentioned below refer to activities supported in developing countries, not in donor countries):**

- Activities supporting vulnerable refugees and all migrants and the protection of the rights and welfare of people on the move;
- Activities that support the development and implementation of conducive legal frameworks for asylum and migration, including activities supporting the strengthening of the capacity of national asylum/Refugee Status Determination (RSD) systems;
- Activities that support the alignment of national development and migration policies to comply with international law and protection standards (including support for the development of a national mobility plan compliant with international law);
- Support for the development of strategies to respond to displacement;
- Support for creation or enhancement of protection services for migrants, refugees and/or displaced persons;
- Support for civil search and rescue operations;
- Activities that support protection-sensitive border management capacities and promote and strengthen accountability of security actors;
- Activities that aim to support and improve access to safe, legal and regular migration through enhanced capacity of relevant government institutions;
- Activities that ensure border management policies do no harm to people whose livelihood depend on mobility, including support for effective implementation of the ECOWAS Free Movement of Persons’ Protocols and the ECOWAS Common Approach on Migration;
- Activities that aim to support other interregional and intraregional free movement initiatives;
- Activities that clearly align development aid with international law and commitments to tackle migrant smuggling and trafficking, affecting especially, women and girls, which ensure that victims of trafficking are assisted, protected and not criminalised;
- Activities that support CSOs as crucial actors providing assistance and protection to displaced persons, migrants and returnees and monitoring adherence to protecting and promoting their rights;
- Activities that support the provision of accurate information to migrants, including displaced persons, about their rights, risks and programmes available to them.
- Activities that empower migrants, including female migrant workers and their communities, to uphold their rights.

Non-ODA eligible activities:
- Support to military or security-oriented border management equipment (vehicles) and infrastructure (wall, fences, etc.) at land or sea;
- Deterrence measures evaluated against the extent to which they lead to a decrease in the number of people moving;
- Activities that aim to and/or are measured by their ability to reduce the number of people migrating;
- Support for legislative or policy change which diminishes mobility options, by criminalising travel along certain routes or in certain regions.
- Activities that aim at blocking migration routes, and present a risk of resulting in declining economic opportunities for the local population and increase insecurity, e.g. by potentially undermining the legitimacy of state authorities;
- Activities that directly or indirectly contribute to the interception, return and confinement of refugees and migrants in abusive circumstances, e.g. through equipment and training of coast guards and border patrols.
4. **Conditionality of financing to migration control outcomes** (should a political focus on stemming migration and the conditionality of assistance be considered when assessing ODA-eligibility?)

DAC members have made commitments to the development effectiveness agenda where they pledge to refrain from introducing conditionality with very particular exceptions. Throughout the development effectiveness high level meetings, civil society advocated to exclude all policy conditionality on international aid, given the mutual nature of development cooperation and the fact that there is no evidence from decades of policy conditionality by donors that it significantly affects partner country behaviour. Of course, transparent fiduciary conditions and mutual policy dialogue based on international human rights standards and commitments are of a different nature than donor-defined policy conditionality. In Paris and Accra, donors were slightly less clear than civil society on the issue of conditionality, but however one interprets the final documents from those meetings, donors promised to refrain from conditionality with the possible exception of a limited number of clear, transparent performance indicators based on the partner country's national development strategy. This clearly applies to refraining from imposing policy conditions that primarily serve to further donors’ own foreign, economic, political or security interests. Activities should only be ODA-eligible where they benefit the interests of developing countries first and foremost and should clearly exclude projects meant to serve donor interests or conducted for “mutual benefit”. This is a core principle of development cooperation.

With migration-related activities, the question of who benefits is particularly critical, given that there are important risks (and political pressures) for donors to instrumentalize aid in order to restrict the arrival of migrants at their borders, or to outsource their own migration policies to developing countries. The history of aid policy conditionality clearly demonstrates that such actions seldom result in positive outcomes for development.

The determination of whether policy conditions are being applied by donors should also take into account “informal arrangements” that have been negotiated outside formal agreements with partner countries on migration and beyond parliamentary scrutiny in both donor and partner countries. Aid provided alongside such informal arrangements are in effect conditioned by these arrangements. All policy discussions that determine appropriate activities in support of orderly, safe and regular migration must be transparent. Such policy discussions should also be informed by human rights standards, which are obligations on the part of all countries.

**Suggested list of ODA-eligible/non-eligible activities**

**ODA-eligible activities:**

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8 See in particular the Paris Declaration on Aid Effectiveness (§16) and the Accra Agenda for Action (§25), [https://www.oecd.org/dac/effectiveness/34428351.pdf](https://www.oecd.org/dac/effectiveness/34428351.pdf)
9 [https://concordeurope.org/2021/05/06/setting-the-highest-standards-for-global-europe-implementation/](https://concordeurope.org/2021/05/06/setting-the-highest-standards-for-global-europe-implementation/)
- Activities fulfilling the ODA definition and unconnected to any migration policy conditions, whether through negative or positive conditionality and whether through formal or informal agreements.

*Non ODA-eligible activities:*

- Activities whose support is formally or informally conditioned upon partner country cooperation on restricting mobility, enforcing stronger/securitized border management or taking back irregular migrants (through readmission agreements)

5. **Engaging with diaspora**

The continuing contribution of diaspora communities to their countries of origin as well as to their host countries is undeniable. Remittances from diaspora indeed have potential to boost local social and economic development in countries of origin, and support to maximize remittances, including by reducing their sending costs, can already be considered ODA-eligible under the current purpose code 24050 on “Remittance facilitation, promotion and optimisation”. It is important to highlight that the engagement with diaspora needs to have a multidimensional approach. COVID-19 pandemic and its consequences have raised, for example, the issues about diaspora engagement with humanitarian aid, including for transnational/global initiatives, the involvement of highly qualified staff, transfer of technology.

Support to diaspora organisations based in developing countries and to their activities to improve the rights, welfare and economic opportunities of diaspora communities in developing countries can be ODA-eligible. However, support to diaspora organisations and migrant organisations based in donor countries should only be ODA-eligible when the activities are meant to support development or humanitarian programs in developing countries, but should not be ODA-eligible when they focus on migrants’ integration in the donor country (as these are activities that should be paid for by donors’ domestic budgets).

**Suggested list of ODA-eligible/non-eligible activities**

*ODA-eligible activities:*

- Activities aimed to reduce the cost of remittances, in accordance with SDG 10.
- Activities that aim to incentivize the use of remittances for local economic and social development in developing countries (as eligible under purpose code on remittance facilitation 24050);
- Support for CSOs working on the rights and welfare of diaspora communities in developing countries, including marriage migrants,
- Support for diaspora organisations in developing countries to represent their communities;
- Support to diaspora organisations’ activities to support development programmes in developing countries;
- Activities that aim to strengthen the capacity of diaspora organisations in developing countries and mechanisms for collaborative engagement between partner country governments and diaspora;
- Activities that aim to strengthen the participation of diaspora organisations in developing countries in the design and implementation of DAC members’ development cooperation.

**Non-ODA eligible activities:**
- Engagement between DAC members and diaspora organisations in provider countries without a clear connection to development or humanitarian programmes in the country of origin.

**TRANSPARENCY, REPORTING, MONITORING REQUIREMENTS**

- **Creditor Reporting System reporting**
  When reporting migration-related activities in the CRS, DAC donors should provide detailed information and links to relevant project documents. In particular, the project description should be clear about in which country the activities are undertaken, to avoid the inclusion of donor country-based activities or trade-offs between several countries based on their cooperation with donors’ conditions.

- **DAC review of activities reported under code**
  In 2018, the DAC committed to a review of activities reported under the code 15190. This review should give specific attention and scrutiny to projects focusing on capacity building for migration management, supporting integrated border and migration management, return and repatriation assistance, and awareness-raising to combat irregular migration, given particular risks attached to such projects. It should assess whether projects reported comply with the developmental objectives of ODA as well as Humanitarian Principles and Development Effectiveness principles. It should assess whether the reported activities are aligned with partner countries’ priorities, rather than with donors’, as the reporting code explicitly reminds that ‘Activities that pursue first and foremost providers’ interest are excluded from ODA’. It should also assess whether the partners chosen were the most appropriate and, in particular, whether partnerships with security actors complied with OECD DAC rules on the subject. The review should be made publicly available.

- **Casebook on ODA and migration**
  The DAC could also consider developing a casebook to further clarify ODA eligibility building on the conclusions of the review, and provide detailed examples of projects that are ODA-eligible and projects that are not.

- **Including an analysis of migration-related programs in DAC peer reviews**
  Given the high risks associated with this area, DAC peer reviews should include a focus on migration-related development policies and activities. This could include a particular attention to the issue of conditionality.
List of endorsing organisations

1. 11.11.11
2. ACT Alliance
3. ActionAid
4. Africa Network for Environment and Economic Justice (ANEEJ)
5. Aidwatch Canada
6. Ambrela, Slovakian Platform for Development Organisations
7. Bond
8. Caritas
9. CNCD 11.11.11
10. Coastal Development Partnership (CDP)
11. Cooperation Canada
12. Cordaid
13. CROSOL – Croatian Platform for International Citizen Solidarity
14. Global Focus, Danish CSOs for Development Cooperation
15. Lithuanian National Non-Governmental Development Cooperation Organisations’ Platform
16. Oxfam International
17. Pacific Islands Association of Non-Governmental Organisations (PIANGO)
18. Reality of Aid
19. SLOGA, Slovenian NGDO platform for development, global education and humanitarian aid