

ANNEX

1. IDENTIFICATION

Title/Number	Start up Project to Promote Regional Maritime Security (MASE) – RSO/FED/023-107
Total cost	EU contribution: EUR 2 000 000 Eastern and Southern Africa-Indian Ocean - A envelope
Aid method / Method of implementation	Project approach - Partially decentralised management and joint management
DAC-codes: 15113/15130	Sectors: Anti-corruption organizations and institutions/Legal and judicial development

2. RATIONALE

2.1. Sector context

The International Maritime Organisation (IMO) reported in 2009 that the Eastern and Southern Africa and the Indian Ocean (ESA-IO) region has become the most pirate-infested waters in the world. Somali pirates are attacking vessels off Somali coast and much further in the maritime areas of Kenya, Yemen, Tanzania, Seychelles, and Madagascar and even further off into the Western Indian Ocean. Piracy undermines the integration processes and the region's economic and social development. It affects trade, food security, and income from exploitation of fisheries and other marine resources as well as tourism, and increases the risks of smuggling of people, weapons, drugs and terrorism.

The ESA-IO coastline and marine area, too extensive to be permanently patrolled by individual countries, is vulnerable to piracy, terrorism and other criminal/illegal activities as the region does not have sustained deep-water maritime surveillance capabilities and relies heavily on outside forces to protect maritime communication lines. In most cases, the criminal justice framework is not able to cope with the necessary detention, prosecution, trials and imprisonment of piracy suspects.

It is recognised that piracy can only be rooted out with the return of the rule of law to Somalia and that this objective can only be addressed at the international and regional levels. Piracy has become an international problem requiring a comprehensive and multilateral solution with an integrated short-, medium- and long-term strategy. In order to contribute to this global effort, a Programme for the Implementation of a Regional Maritime Security Strategy (MASE Programme) for the ESA-IO region is thus proposed in accordance with (i) the provisions of the ESA-IO 10th EDF Regional Strategy Paper/Regional Indicative Programme; and (ii) the ESA-IO *Regional Strategy and Action Plan against Piracy and for Promoting Maritime Security* («Regional Strategy»), as adopted by the 2nd Regional Ministerial Meeting held on 7th October 2010 in Mauritius.

The development of a Programme of Maritime security MASE for the middle- to longer-term (January 2012 – December 2015) is in progress since 2011. As the current level of piracy and lack of maritime security pose a serious threat to the region, there is an immediate need to start preparations for the implementation of the future MASE Programme. The EU has agreed to support immediate activities by creating a MASE Start up Project aiming to support the organisational structures and systems for coordination, alignment and effective communication which are pre-requisites and need to be developed and functioning before the MASE programme starts. Moreover, there is an urgent need to have the right legal framework, expert training, appropriate equipment and facilities in place and sustainable in the longer-term in the region.

It has become clear that strengthening the region in the areas of maritime security, and maritime law enforcement deserve more support. Regional cooperation is key and RECs need to have full ownership in building and maintaining expertise. Member States need to coordinate maritime security issues involving multiple agencies and organizations.

2.2. Lessons learnt

Since the agreement on the Djibouti Code of Conduct (DCoC) – a process led by the International Maritime Organisation (IMO), piracy in the Western Indian Ocean has become an important framework of cooperation in the region and at international level mainly through efforts of countries such as Kenya and Seychelles and implementing organisations such as IMO and the United Nations Office on Drug and Crime (UNODC).

Lessons learnt from the ongoing cooperation to support maritime security in the region are the following: (i) maritime security and law enforcement require involvement of a wide variety of stakeholders in countries across the region. Quick gains are important to show immediate results, but (ii) only a holistic long-term approach can address maritime security issues including investment in equipment, and training of people, (iii) established cooperation with international organisations (IMO, the International Criminal Police Organisation INTERPOL and UNODC) need to be used to ensure all stakeholders work closely together. Special attention should be paid to the UN Security Council mandated Contact Group on Piracy off the Coast of Somalia (CGPCS) and its working groups.

2.3. Complementary actions

The African Union (AU) and the ESA-IO Regional Organisations have piracy high on their agenda. The fight against piracy and armed robbery as well as promotion of maritime security in general are in the mandates of all the Regional Organisations (ROs), namely Common Market of Eastern and Southern Africa (COMESA), East African Community (EAC), Intergovernmental Authority on Development (IGAD) and Southern African Development Community (SADC), as well as Indian Ocean Commission (IOC). They participated in the preparation of and expressed strong support for the «Regional Strategy» that was adopted by the 2nd ESA-IO Regional Ministerial Meeting.

The agreed regional framework, the Djibouti Code of Conduct (DCoC) concerning the *Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden*, is a non-binding instrument primarily for cooperation among States in the region and is key to contribute to improvement of maritime security in the Western Indian Ocean. The IMO has undertaken a broad capacity-building initiative to assist the signatories in the implementation of the DCoC. The EU already supports the implementation of the DCoC, through a "Critical Maritime Routes" programme under the Instrument for Stability long term component. The project "Enhancing maritime security and safety through information sharing and capacity building" (MARSIC) supports the setting-up of three information sharing centres in the region Tanzania, Kenya and Yemen, as well as the Djibouti Regional Training Centre. In addition, the IMO together with UNODC, assists Member States in bringing national anti-piracy legislation into line with the DCoC. IMO has also adopted a series of guidance documents on how to prevent, prepare for, and react to incidents of piracy and armed robbery at sea.

The UNODC Counter-Piracy Programme (CPP) is supported by the joint EU/UNODC programme funded under the Instrument for Stability short term component. "Support to the Trial and Related Treatment of Piracy Suspects" focuses on technical cooperation to strengthen the capacity of countries in the region that have signed Transfer Agreements to prosecute the suspected pirates apprehended by the EU Common Security and Defence Policy (CSDP) Operation Atalanta. Moreover, UN agencies working in Somalia to address the inland root causes of piracy have worked together in the Nairobi-based cluster on inland solutions. Other important areas for cooperation related to this Project are UNDP focus on good governance and rule of law (Rule of Law and Security-ROLS Programme- financed by the EU), while FAO is addressing fishery and agricultural projects.

INTERPOL and the European Police Office (EUROPOL) share and analyse piracy-related evidence and data. A joint entity, the Analysis Working Group (AWG) on Maritime Piracy, is focusing on organised crime structures, and suspicious financial transactions linked to piracy. Moreover, the EU is supporting INTERPOL's initiative through "Critical Maritime Routes" programme – the "Law enforcement capacity building in East Africa" project that focuses on training and capacity building for investigations, including on financial networks, and provision of equipment to the law enforcement agencies of Seychelles, Kenya and as feasible Somalia (Somaliland and Puntland).

The EU's total allocation foreseen for Somalia under 10th EDF funding amounts to EUR 215.8 million to support governance, education, economic development and food security. The EU is financing 23 projects for capacity building of Non State Actors (NSAs), youth and community groups and institutional strengthening of the Somali judiciary, civilian police and custodial services, as well as 25 projects for private sector development and agriculture and livestock production, particularly for poor rural households. Somalia is also one of the countries benefitting from the food security thematic programme with an allocation of EUR 12 million for the period 2007-2010. Also, the 10th EDF ESA-IO Fisheries programme (IRFS) is in line with part of the Project's actions under its component for "Monitoring, Control and Surveillance".

This Start up Project will take full account and closely coordinate with the CSDP actors on their ongoing and planned activities – Operation Atalanta, Training Mission EUTM Somalia, as well the possible CSDP action for Regional Maritime Capability Building.

2.4. Donor coordination

The political, economic and social challenges of maritime insecurity, including piracy, in the region have been recognised by all major regional Organisations and international partners. The UN-mandated Contact Group on Piracy off the Coast of Somalia (CGPCS) was established to facilitate discussion and coordination of actions among States and organisations to counter piracy off the coast of Somalia. This Start up project will take full account of the ongoing work of the CGPCS and its working groups.

There will be need for extensive coordination with these partners, such as the AU, SADC, the UN, the IMO, the CGPCS, the Ports Management Authority of Eastern and Southern Africa and INTERPOL. A coordination mechanism will be set-up with them. Conformity and adherence will be ensured with the AU's African Maritime Transport Charter and Plan of Action, the AU's Durban Declaration on Maritime Safety and Security and the Djibouti Code of Conduct through the Technical Steering Committee of the Project. Coordination will also involve EU Member States such as Germany, the Netherlands, UK and France and other donor countries including Japan, USA, Canada, and Australia.

3. DESCRIPTION

3.1. Global and specific objectives

The **Global Objective** is to create a process in the ESA-IO region to ensure the Regional Economic Communities and governments are well prepared to implement the middle- to long-term Regional Strategy against Piracy and for Promoting Maritime Security. The **Specific Objective** is to prepare the ESA-IO region for the implementation of the MASE Programme through the development and implementation of all necessary structures, systems and coordination/communication mechanisms and the implementation of immediate capacity building activities.

3.2. Expected results and main activities

The two results for the MASE Start up Project are:

Result A: Development and implementation of the programme organisation, structure and systems and starting of the processes for successful development of the MASE Programme.

The **following results** need to be achieved within the implementation period of the Project: (i) the recruitment of a Technical Assistant to implement the MASE Programme is completed and ready; (ii) the regional Network of Contact Points on Piracy (NCP) is set and operational; (iii) systems are developed for communication, coordination and planning for the operation of the network of contact points and the MASE project; (iv) working arrangements are agreed with key partners; (v) the ESA-IO Regional Action Plan against Piracy and for Maritime Security is adopted; and (vi) pledging mechanism in place with international partners for the mobilisation of funds for the implementation of the ESA-IO «Regional Strategy».

The regional Network of Contact Points on Piracy will build on and use to the extent possible the existing network of National Focal Points of signatory countries of the Djibouti Code of Conduct in order to avoid duplication of structures and mechanisms.

A Project Coordinator will be recruited by the beneficiary as an immediate step before the Start up Project begins. Moreover, there is provision for the organisation of workshops to facilitate clear understanding of roles and responsibilities by various line players and to enhance ownership of the MASE programme.

Result B: Implementation of immediate capacity building activities of the five result areas foreseen for the MASE Programme

Result B.1 A Somalia Inland Action Plan is agreed and implementation started

IGAD is currently developing a Somalia Inland Action Plan; this plan will, address root causes of piracy. The Inland Action Plan will build upon and will be complementary to the on-going and planned cooperation activities of the EU, UN and other key actors. This Start up Project will concentrate on areas of the Inland Action Plan where it can add value. In 2010, some initiatives started, which fit in an inland strategy, and could be reinforced with supplementary immediate actions:

The **following actions** are planned for immediate implementation in Somalia:

- 1.1 Support to the Kampala Framework for dialogue among Somalis and initiate home grown solutions;
- 1.2 Strengthen judicial capacity and limited infrastructure works for the courts and prosecutors and associated institutions such as legal aid; and
- 1.3 Support Somalia's efforts to establish its Exclusive Economic Zone (EEZ).

Result B.2 *National/regional legal, legislative and infrastructural capability for arrest, transfer, detention and prosecution is developed within the region*

Result 2 will focus both on developing and implementing joint legislative frameworks and on strengthening relevant institutions to arrest, transfer, detain suspected pirates, consistent with the ongoing UN initiatives and the DCoC. Since May 2009, the UNODC Counter Piracy Programme (CPP) has supported countries in the region, willing to prosecute suspected Somali pirates caught by navies patrolling in the Gulf of Aden and Indian Ocean. Kenya, Seychelles are taking suspected pirates for prosecution and have developed their capacities and capabilities to arrest, prosecute, try and detain suspects of maritime crimes. The criminal justice framework in the countries benefited from the CPP, and paved the way for possible new programmes in the region in Mauritius and Tanzania. Comoros has recently also expressed the willingness to develop its criminal justice capacity to contribute to addressing piracy. The Regional Action Plan against Piracy and for Promoting Maritime Security identifies actions for immediate implementation with a focus on: i) the legislative capabilities of States in the region; ii) the investigative capabilities of law enforcement agencies; iii) strengthening the prosecutorial, judicial and detention capacities; and iv) creating opportunities for prisoner transfers.

Based on the experience of the CPP, the immediate actions under this Start up Project can focus on strengthening the initiatives already taken by the countries in the region. Making use of the CPP infrastructure and knowledge will allow for immediate activities and cost saving. Active participation in all activities of the regional Network of Contact Points on Piracy is required. Continuing training and learning exchange on a regular basis is a high priority. To ensure training can continue over the next couple of years, adding training of trainers at regional and national levels is important, so this activity might be extended in the MASE Programme at least for six months.

The **following actions** are planned for immediate implementation:

- 2.1 Support to legislative reform (with a focus on the anti-piracy law and prison transfer law) as needed in Kenya, Tanzania, Mauritius and Comoros;
- 2.2 Taking over the IfS operations in Seychelles, Kenya, and a 12-month training schedule with basic, advanced and trainer courses, including training for handling of high risks prisoners, supplemented by four regional learning exchange meetings;
- 2.3 Prepare an operational support package, including video conferencing facilities, and prosecution facilities and setting up of specialised piracy Units in prosecution departments, is available to countries willing to take pirates for prosecution in the near future, as well to respond to the security and human rights norms.

Result B.3 *Enhanced regional capacity to address economic impact of piracy in the region*

The focus will be on addressing the economic issues related to piracy with a two-pronged approach: (i) proactively undermine its financing by identifying and addressing the source and transfer of funds and (ii) address its impact on economic development. The Start up Project will identify the need to develop a common and coordinated action on anti-money laundering and piracy funding. A regional cooperation on the issue of penalisation of financial crimes related to acts of piracy and strengthening existing anti money laundering programmes can follow later on. Substantial initial work has been undertaken resulting in the first meeting of the working group meeting on money laundering and addressing financial flows. COMESA has undertaken a study on money laundering whose findings will be used to discuss further with CGPCS and INTERPOL. Actions in this result area will have to build on capacity building activities implemented under the IfS project "Law enforcement capacity building in East Africa". Developing an international and regional strategy in this area at the same time creates the opportunity to align and coordinate activities.

In light of the above, the following actions are planned for immediate implementation:

- 3.1 Comprehensively and systematically study the economic and social effects of piracy on countries in the region with an aim to cushion the industries that are adversely affected;
- 3.2 Ensuring participation of regional countries at the CGPCS working group on money laundering;
- 3.3 Ensuring the CGPCS initiative and support provided by INTERPOL and UNODC in this field, leads to a regional action plan on money laundering aligned with the international strategy; and
- 3.4 Regional workshops and exchanges on money laundering and capacity development for setting up, reinforcement and collaboration among Financial Intelligence Units.

Result B.4 Adequate national/regional capacity is acquired for maritime tasks and support functions

The focus will be to improve and create effective systems of information sharing on maritime safety and security issues building on regional information exchange network, supported by the IfS. At a later stage, sharing intelligence involving many stakeholders can be added (IMO suggestion). On a more practical level, there is the need to assess existing maritime assets and identify needs in order to fulfill maritime safety and security tasks. IMO has planned to commence these assessments in 2011. Furthermore, the region recognizes the importance of an up-to-date legal framework to cover all aspects of maritime safety and security. Based on the assessment of activities already undertaken by IMO and of the Regional Plan of Actions, the following immediate actions are recommended for additional support:

- 4.1 Feasibility study for the development of an ESA-IO regional legal framework to cover all aspects of maritime safety and security;
- 4.2 Increase the activities to start information-sharing regarding the MASE project once the regional exchange network is fully established;
- 4.3 Ensure the visibility of the existing framework (Djibouti Code of Conduct) in the ESA-IO region;
- 4.4 Initial provision of light equipment to National Coast Guards for selected countries willing to prosecute.

Result B.5 A networking for exchange of information and coordination is established and facilitated

Information exchange, including operational information on incidents of piracy and armed robbery coordination and networking, is a prerequisite for the successful implementation of the «Regional Strategy». Actions can be planned in the short- to medium-term to build on the undergoing efforts by the IMO and the EU via the MARSIC project. Funding of this result is foreseen under the DCC IMO Trust fund. The regional Network of Contact Points on Piracy will be fully associated with this initial phase of IMO's work.

3.3. Risks and assumptions

Key assumptions relate to: (i) A firm commitment of all ESA-IO countries to cooperate in the fight against piracy; (ii) The continuation of efforts to promote peace, security and development in Somalia; and (iii) Continued support of the international community.

3.4. Crosscutting Issues

The activities will be implemented according to principles of gender neutrality in its employment and outsourcing actions, gender balance in all of its committees, workshops and training interventions; participatory approach of civil society and the private sector; good governance and human rights issues; and visibility of results.

3.5. Stakeholders

The Project will be implemented by the Indian Ocean Commission (IOC) in close collaboration with IGAD, COMESA, EAC and the ESA-IO Member States and will be based on the principle of subsidiarity and complementarity of national and regional actions. Direct beneficiaries will therefore be the ESA-IO Regional Organisations, Governments and their agencies. Other stakeholders include beneficiary country authorities in a broader sense, regional organisations, development partners and/or supporting interventions in the region that either benefit from or are complementary to the project objectives. The ultimate beneficiaries will be the people of the region, who will be able to benefit from a more secure environment.

4. IMPLEMENTATION ISSUES

4.1. Method of implementation

A Financing Agreement will be signed between the Indian Ocean Commission (IOC) as Regional Authorising officer (RAO) and the EU. The Start up Project will be managed via two different aid delivery methods: (i) partially decentralised management through direct decentralised operations (Programme Estimates) in accordance with Articles 21 to 24 of the Financial Regulation of the 10th EDF and (ii) Joint Management with eligible international organisations.

The IOC as RAO will manage project resources through Programme Estimates under direct decentralised operations modalities (Result A + Result B.1.3 + Result B.3 + Result B.4 + Operating Costs and Visibility). It will be responsible for setting up the Anti Piracy unit for the MASE Programme, setting-up of the Network of ESA-IO Contact Point on Piracy, the ESA-IO Ministerial meetings, dialogue with key partners, undertaking key activities linked to the mobilisation at regional level and capacity building.

Joint management, through the signature of Contribution Agreements with international organisations, such as with UN Office on Drugs and Crime (UNODC) for Result B.1.2 and Result B.2. and with the UN Secretariat (for the UN Political Office for Somalia, UNPOS) for result B.1.1. This will be in accordance with Article 29 of the Regulation (EC) No 215/2008 on the Financial Regulation applicable to the 10th EDF.

The international organisation complies with the criteria provided for in the Financial Regulation applicable to the 10th EDF. The international organisations are covered by a Financial and Administrative Framework Agreement between the European Community and the United Nations (FAFA) of 29 April 2003 and the contractual model that will be used is the Standard Contribution Agreement.

The change of management mode constitutes a substantial change, except where the Commission "re-centralises" or reduces the level of tasks previously delegated to the beneficiary country, international organisation or delegate body under, respectively, decentralised, joint or indirect centralised management. In beneficiary countries where the application of flexible procedures is foreseen (Articles 72-73 of the revised Cotonou Agreement), the use of such procedures is allowed under the Start up Project.

Steering Committee: each REC will report on progress on the project's implementation within its own policy organs, the ESA-IO Regional Ministerial Meeting on Piracy will meet every year to provide overall political guidance.

The Commission controls ex ante all the procurement procedures except in cases where programmes estimates are applied, under which the Commission applies ex ante control for procurement contracts >EUR 50.000 and may apply ex post for procurement contracts ≤ EUR 50.000. The Commission controls ex ante the contracting procedures for all grant contracts. Payments are executed by the Commission except in cases where programme estimates are applied, under which payments are executed by the beneficiary country for operating costs and contracts up to the ceilings indicated in the table below.

The RAO ensures that, by using the model of financing agreement for decentralised management, the segregation of duties between the Authorising Officer and the Accounting Officer or of the equivalent functions within the delegated entity will be effective, so that the decentralisation of the payments can be carried out for contracts up to the ceilings specified below:

Table 1: Contract ceilings

Works	Supplies	Services	Grants
< EUR 300,000	< EUR 150,000	< EUR 200,000	≤ EUR 100,000

4.2 Procurement and grant award procedures/programme estimates

a) *Under decentralised operations:*

- 1) *Contracts:* all contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question. Participation in the award of contracts for the present action shall be open to all natural and legal persons covered by the Regulation applicable to the 10th EDF. Further extensions of this participation to other natural or legal persons by the concerned authorising officer shall be subject to the conditions provided for in Article 20 of Annex IV of the revised Cotonou Agreement.

- 2) *Specific rules for grants:* the essential selection and award criteria for the award of grants are laid down in the Practical Guide to contract procedures for EU external actions. They are established in accordance with the principles set out in Title VII 'Grants' of the 10th EDF Financial Regulation. When derogations to these principles are applied, they shall be justified, in particular in the following cases: (i) financing in full (derogation to the principle of co-financing): the maximum possible rate of co-financing for grants is 80% of the total accepted costs of the Action, if full financing provide the justifications for it. Full financing may only be applied in the cases provided for in Article 109 of the Council Regulation on the 10th EDF Financial Regulation; (ii) derogation to the principle of non-retroactivity: a grant may be awarded for an action which has already begun only if the applicant can demonstrate the need to start the action before the grant is awarded, in accordance with Article 108 of the 10th EDF Financial Regulation.
- 3) *Specific rules on programme estimates:* all programme estimates must respect the procedures and standard documents laid down by the Commission, in force at the time of the adoption of the programme estimates in question (i.e. the Practical Guide to procedures for programme estimates). The EDF financial contribution covers the ordinary operating costs deriving from the programme-estimates.

b) Under joint management with an international organisation:

All contracts implementing the action are awarded and implemented in accordance with the procedures and standard documents laid down and published by the relevant International Organisation. Expenditure under the Contribution Agreements with international organisations is eligible as from the date of receipt of the request of the international organisations (Point 6.8 of the DEVCO Companion to the financial and contractual procedures applicable to external actions financed from the general budget of the European Union, Point 22 of Annex D 2).

4.3 Budget and calendar

The total costs of the MASE Start up Project will be EUR 2 000 000.

Indicative budget/expenditure :	In EUR
Contribution Agreement with UNODC: Result B.1.2 + Result B.2	950,000
Contribution Agreement with UN Secretariat (UNPOS): Result B.1.1	178,000
Programme Estimate(s) (IOC): Result A + Result B.1.3 + Result B.3 + Result B.4 + Operating Costs and Visibility	787,000
Evaluation and Audits (managed by the EU)	30,000
Contingencies*	55,000
TOTAL	2,000,000

* The European Union's contribution to the "Contingencies" heading may be used only with prior agreement of the Commission.

The foreseen operational duration is **18** months as from the signature of the Financing Agreement.

4.4 Performance monitoring

The Logical Framework provides for a set of indicators at project's purpose and results level. Quantitative targets for process and outcomes indicators for internal monitoring will be established at the start of the project. The Inter Regional Coordination Committee (IRCC) members will be kept regularly informed of the project's achievements and will be invited to attend the Steering Committees.

4.5 Evaluation and audit

A budgetary provision is made for regular audits on Programme Estimates and if required on Contribution Agreements with international organisations. The programme results will be evaluated. Independent consultants recruited directly by the Commission will carry out a final evaluation, at the beginning of the closing phase.

4.6 Communication and visibility

The project's budget makes due allowance for Information, Communication, and Visibility, in line with the EU visibility requirements while demonstrating the regional ownership of the project outputs. The RAOs website, including the Programme's website, will be the main tools for communication, visibility and dissemination of the project's achievements and its current and forthcoming events.