

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Capacity building in support of security and development in third countries		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	EEAS/FPI/DEVCO	DATE OF ROADMAP	15/03/2016
LIKELY TYPE OF INITIATIVE	Major initiative CWP 2016 – new legislative proposal		
INDICATIVE PLANNING			
ADDITIONAL INFORMATION			
	nent is provided for information purposes on of the Commission on whether this initiat		

and structure.

A. Context, Subsidiarity Check and Objectives

Context

- 1. The economic gap between countries affected by conflict and others is increasing.¹ The link between security and development is recognised both at European and at international level, notably with the adoption of the United Nations' 2030 Agenda for Sustainable Development², which underlines the importance of promoting peaceful and inclusive societies both as a Sustainable Development Goal (SDG 16³) and in order to achieve other development policy outcomes.
- 2. However, development donors, including the UN, the European Union or development banks (i.a. World Bank or African Development Bank) are not always in a position to finance actions related to peace and security through their regular systems. Traditionally, the focus of development cooperation has been on supporting economic development and social systems, infrastructure or the rural sector, as well helping institutional good governance. For the EU, the primary objective of development cooperation policy as provided by the Treaty remains reducing and eradicating poverty (Article 208 TFEU).

The 2006 European Consensus on Development⁴ recognises the security-development nexus. Moreover, the EU is a major supporter of the 'New Deal for Engagement in Fragile States'⁵ and the emphasis it places on this nexus particularly in fragile and conflict-affected states. The European Parliament's resolution on the global development framework after 2015⁶ also stressed the importance of the 'New Deal' and insisted upon a long-term commitment that prioritises "security sector reform and the establishment of the rule of law and democratic institutions".

- 3. On 19 February 2016, an agreement was reached at the OECD-DAC updating and clarifying the reporting directives for official development assistance (ODA) on peace and security⁷. Among others, programmes focusing on security expenditure management, the role of civil society in the security sector, legislation on child soldiers, security sector reform, civilian peacebuilding, conflict prevention and conflict resolution, and control of small arms and light weapons are ODA eligible. Security sector reform that improves democratic governance and civilian control is ODA-eligible.
- 4. The Union already finances a multitude of actions in the field of capacity building in support of security and

¹ World Bank's World Development Report (Conflict, Security, and Development), 2011

² <u>http://www.un.org/sustainabledevelopment/sustainable-development-goals/</u>

³ Sustainable Development Goal 16: promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

⁴ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy entitled "The European Consensus", Official Journal, C 46 of 24.2.2006.

⁵ The EU endorsed the New Deal for engagement in fragile states, one of the main Building Blocks of the 4th High Level Forum on Aid Effectiveness in Busan in November 2011 (see <u>http://www.pbsbdialogue.org/en/</u>)

⁶ 2014/2143 (INI)

⁷ http://www.oecd.org/dac/DAC-HLM-Communique-2016.pdf

development. Yet today's challenges show that additional efforts are needed to link more traditional development cooperation with peace and security interventions. The narrative of both the EU's security cooperation (which increasingly recognises the importance of bringing in best practice from development cooperation) and development cooperation (which increasingly recognises the need to address security issues) has changed.

- 5. The Commission has taken initiatives pertaining to the **security-development nexus** for several years.⁸ However, a proposal in 2004 to provide broad support to security sectors in third countries, including long-term support for capacity building in the field of military peace-support operations, was not taken on by the EU's co-legislators.⁹ Since then, development and crisis instruments under the general budget of the Union (EU budget) have focused on supporting security sector reform with a civilian objective primarily. On the other hand, in the context of the Common Security and Defence Policy (CSDP), the EU advises, mentors and trains security actors of partner countries and organisations, be they civilian or military.
- 6. The present initiative ('capacity building in support of security and development in third countries') takes place in the context of an increasing involvement of the EU, both in political and financial terms, to help partner countries and regional organisations build capacities in support of security and development, and in particular to enhance their ability to manage crises by themselves.

This initiative follows up on the Joint Communication of 28 April 2015 from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy on 'Capacity building in support of security and development'¹⁰ (CBSD) and the subsequent conclusions of the Foreign Affairs Council Defence of 18 May 2015.¹¹ In particular, paragraph 16 of the conclusions invites the Commission and the High Representative to reflect further and to present proposals on the issue. The conclusions also call for an EU-wide strategic framework for Security Sector Reform (SSR), which will establish the broader context for this initiative and outline how coordination between the various strands of capacity building in support of security and development can be reinforced.¹²

The Joint Communication on CBSD analysed the current policy context and concluded that there are gaps in the way the EU builds the capacities of partners in the security sector. This concerns, in particular, systematic and longer-term EU support to defence and military security sector capacity building of third countries and regional organisations. In the globally deteriorating security environment, the limitations of the current EU toolbox hamper its ability to comprehensively address the issue and improve cooperation, in particular with third country armed forces.

- 7. Consequently, the Commission Work Programme 2016 includes a package on capacity building in the security sector, which covers security sector reform¹³ and a possible new dedicated instrument for capacity building in support of security and development in third countries.
- 8. This initiative also fits with the ambition to bring together EU tools on major challenges, as outlined in the Joint Communication of 11 December 2013 on 'The EU's comprehensive approach to external conflict and crisis'¹⁴ and the subsequent Council conclusions.¹⁵

Issue

- 1. There are gaps in the EU's ability to provide capacity building support for security and development to military actors of partner countries, including complementing the provision of training and reform support by CSDP operations with short- and longer-term financing and provision of non-lethal equipment. This is currently only done partially through ad hoc arrangements.¹⁶ In a number of cases, the effectiveness and sustainability of CSDP military training is undermined by the lack of equipment to complement the training. The lack of funding opportunities and immediate reaction capacity has negatively affected the overall effectiveness of EU support efforts.¹⁷
- 2. The military can play a key role in creating an enabling environment for sustainable development, ensuring human security, and in peace enforcement and peace-keeping. They can also be a threat to the population if they are not accountable, or if they lack training, equipment or experience to cope with situations in a way that is compatible with human rights and international humanitarian law. **The EU should be able to engage with such actors, to fully tackle the linkages between peace, security and development.**

⁸ See, for example, the 2011 Communication from the Commission on Conflict Prevention (COM(2001)211)

⁹ Proposal for the Instrument for Stability tabled by the European Commission in 2004 on the basis of former Article 308 EC Treaty, which has been replaced by Article 352 TFEU as a consequence of the entering into force of the Lisbon Treaty.

¹⁰ JOIN(2015) 17 final of 28 April 2015

¹¹ Council conclusions on CSDP, document 8971/15 of 18 May 2015

¹² See Commission Work Programme 2016 (COM (2015) 610), 27.10.2015

¹³ <u>http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_eeas_001_cwp_security_sector_reform_en.pdf</u>

¹⁴ JOIN(2013) 30 final of 11 December 2013

¹⁵ Council conclusions 9644/14 of 12 May 2014

¹⁶ See JOIN (2015) 17 final

¹⁷ JOIN (2015) 17 final, point 2.2, pages 5 and 6

- 3. In order to do this effectively, as set out in the Joint Communication of 28 April 2015 on 'Capacity building in support of security and development', the EU needs to consider using or developing appropriate instruments.
- 4. This initiative would focus on providing the missing element in the EU toolbox, i.e. the ability to engage also with the defence sector and militaries of third countries and organisations. Whilst the Union already possesses a range of instruments to deal with the improvement of police and border forces, enhanced cooperation with third country defence sectors and militaries is lacking, except in the particular case of African countries under the ACP¹⁸ Partnership Agreement, within the wider framework of African-led peace support operations and the African Union African Peace and Security Architecture. These countries are able to benefit from the African Peace Facility financed through the extra-budgetary European Development Fund.¹⁹ In development terms, more effective armies, responding to high professional standards while acting in a good governance and rule of law based framework, could not only contribute to civilian control over the military and better governance of the latter, but they could also improve human security. This in turn would have positive impacts on medium-term economic and social development and contribute to more peaceful societies, including the implementation of Sustainable Development Goal 16 of the UN Agenda 2030 mentioned above.

Subsidiarity check

Comprehensive EU support would have the added value of allowing short- and longer-term actions to bring on board all security actors in a country, and would allow for better coordination of such support. Interventions at EU level can better achieve security and stability and act as a driver for more effective international efforts around security and development. The political objective of delivering internal security cannot be achieved without effective engagement with partners in non-EU countries and international organisations.

Member States already finance military CSDP operations in third countries, to provide support to armed forces and enable them to meet the tasks for which they are trained, either through voluntary contributions or through the Athena²⁰ mechanism. As a follow-up to the Joint Communication on 'Capacity building in support of security and development' and in the broader context of a security sector reform, Member States have requested the Commission to explore options for funding capacity building in support of security and development. The presence of Member States' technical expertise placed in partner countries' relevant Ministries (Interior, Defence), can be an added value to ensure coherent and useful interventions to build capacities in support of security and development.

Development cooperation policy is a parallel competence (Article 4(4) TFEU), i.e. the exercise of the Union's competence does not result in Member States being prevented from exercising theirs. The EU and its Member States have a role to play through the comprehensive approach to preventing and managing conflicts and their causes.

Main policy objectives

The initiative will aim to overcome existing gaps in a systematic, holistic and long-term manner. It is aimed at ensuring better governance, enhancing civilian control and oversight over the military, and cooperating with third countries' security sectors, including armed forces. The proposed initiative should be applicable worldwide.

EU support could cover capacity building programmes through training and mentoring, provision of non-lethal equipment and infrastructure improvements, aimed at building and strengthening security actors' capacity in order to contribute to the achievement of peaceful and inclusive societies, including through creating more effective, accountable and transparent military institutions. It should exclude any activities incompatible with the UN Charter and principles of international law. This initiative, with a clearly defined scope, would provide a missing piece in the EU's toolbox.

The EU objective of achieving the 0.7% of GNI/ODA should be borne in mind, bearing in mind the 2016 agreement at the OECD-DAC concerning the reporting directives for official development assistance (ODA) on peace and security. The DAC directives would not prejudge analyses of different options for CBSD.

The following principles should inform the proposed initiative:

Comprehensive approach: Programmes should be designed in line with the new EU-wide security sector reform framework (currently being developed), including monitoring and evaluation principles and a dedicated risk management framework. They should set out how they fit with relevant EU country or regional strategies, and be planned in a manner that ensures involvement of all relevant EU actors. Appropriate coordination, in the field between CSDP missions (where

¹⁸ The Partnership Agreement between the African, Caribbean and Pacific (ACP) countries and the EU is financed under an extra-budgetary instrument, the European Development Fund (EDF).

¹⁹ The European Development Fund is financed by Member States contributions and is not part of heading IV of the general budget of the Union, which finances most other EU external financing instruments.

²⁰ Article 41 TEU sets the principles for the financing of EU civilian and military crisis management operations. Operations having military or defence implications cannot be financed from the Union budget. The common costs of such operations are currently covered by Council Decision (CFSP) 2015/528 of 27 March 2015 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP, OJ L 84, 28.03.2015. Currently all Member States except for Denmark contribute to Athena.

relevant) and EU Delegations, and at headquarters level, will be ensured so that programmes under the proposed initiative are part of a comprehensive EU approach.

Contribution to development objectives: Programmes should indicate how they contribute to sustainable development, including but not limited to SDG 16 and any existing regional or national development plans and strategies (e.g. new deal compacts).

The EU will not finance lethal equipment.

Cooperation will be based on principles of **good governance** and respect for human rights and the rule of law: accountability, transparency, effective democratic and civilian administration, control and oversight over the security system, respect for human rights and legitimacy should be mainstreamed in security forces development;

Support local ownership by the partner country; the reform of the security sector is a political process that must be placed in its specific national and regional context. Support requires knowledge and sensitivity. For security sector reform to succeed it requires ownership and inclusiveness of all relevant national local actors; it is also paramount that the local authorities have the necessary absorption capacity.

Flexibility: the proposed initiative should be able to respond in a timely and appropriate manner to meet needs. The proposed initiative would therefore also contain a quick-reaction component allowing the EU to flexibly address unforeseen needs and crises linked to unforeseen circumstances.

Link security and justice: Support to the security sector should aim to ensure that the security forces operate within the bounds of domestic and international law and that they support efforts to enforce and promote the rule of law.

Transparency: Programmes should be conducted transparently and managed openly; they should be designed in a manner that encompasses a strong communication component amongst all concerned actors.

Sustainability in the medium and long term: Sustainability is critical to the success of capacity building in the security sector; building the necessary elements and developing basic good practices should be an integral part. CSDP missions and/or Member States experts can support monitoring and implementation of CBSD activities by providing advice. Articulation with longer-term development funding in the governance sector will be sought to foster sustainability.

To incorporate specific risk assessment and monitoring modalities: Support to security forces entails inherent risks linked to the possible misuse of the equipment provided; in extreme scenarios it could be used by local forces to ends that could lead to serious human rights violations and/or transferred to unfriendly actors (e.g. non-state armed groups that seize the equipment). The exclusion of lethal equipment offers some protection; however, non-lethal military equipment could be misused from an international humanitarian law perspective. Therefore, every effort should be made to eliminate such possible risks. The Joint Communication on capacity building in support of security and development calls for the development of risk management methodology on EU support to the security sector of partner countries or organisations. Thus, and in order to manage risks, the EU will need to incorporate specific risk assessment and monitoring modalities. These can include but are not limited to: Conflict Risk Assessments (based on tools such as the GCRI (Global Conflict Risk Index) developed by the JRC) and Conflict Analysis Frameworks to develop a shared understanding and regular monitoring of the situation by humanitarian-development-security actors. Finally, the commitment to ensure the transparency and impact of peace and security spending and tracking its contribution to achieve SDG 16 targets can address what some stakeholders may perceive as the risk of 'securisation of development'.

Context-specific analysis: EU support to security capacity building should be based on context analysis including conflict sensitivity.

This initiative should take into consideration and be aligned with similar activities performed by other partners and organisations with a view to enhance effectiveness and avoid duplication.

B. Option Mapping

Baseline scenario – no EU policy change

If there is no change in the current setup, difficulties would remain regarding the effectiveness of CSDP missions and the comprehensiveness of the EU's SSR engagement. The lack of equipment will continue to hinder the delivery and sustainability of training achievements.

Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation

The Council has called on the Commission and the HR/VP to explore possible options.

1. *Outside* the general budget of the Union:

Currently, two instruments which are not within the general budget of the Union are in a position to partly finance

operations with military implications: the Athena mechanism and the African Peace Facility (APF) within the European Development Fund (EDF).

2. *Within* the general budget of the Union:

If the instrument were to be an EU external action instrument financed through the general budget of the Union, Articles 209(1) and 212(2) TFEU would allow for an external action instrument to be anchored in the security-development nexus with a view to promoting sustainable development.

Alternative policy approaches

In line with the Council conclusions and in accordance with the requirements of the Better Regulation Guidelines, several alternatives may be considered to achieve the objective, ranging from the *status quo* (no action) to designing an instrument to underpin the security-development nexus and clarify the EU's role as a security provider and to enhance the EU's international security engagement. Engagement should not be geographically limited in scope. Moreover, it should address mid- and longer-term cooperation needs. This could contribute to armies responding to high professional standards under civilian oversight.

Options to address the issue described above should therefore be explored. This includes options to amend existing instruments or to have a new budgetary or extra-budgetary instrument. When these options fall within the budget of the Union, the following should be taken into account i) the legal framework as set out by the Treaties ; and ii) Union's current (2014-2020) multiannual financial framework.

The different options *outside* the general budget of the EU are:

- <u>Adapting the African Peace Facility</u> (APF). The APF is an exceptional and temporary instrument under the current extra-budgetary European Development Fund. It has a regional geographic focus: African countries which are part of the EU-ACP Partnership. In addition, it is designed to benefit not individual States directly, but 'intermediary' organisations, including the African Union and African sub-regional organisations and structures (the African Peace and Security Architecture, APSA). Adapting the APF would therefore run counter to the Council's request for a "flexible geographic scope". Furthermore the APF is already under considerable budgetary pressure.
- **Proposing a new dedicated instrument outside the general budget of the Union**, comparable to the European Development Fund (EDF), but with a worldwide scope, so as to avoid limitations. This option would require a commitment from EU Member States to provide appropriate additional financial contributions or an agreement to divert some of the funding from the EDF towards this new instrument.
- <u>A revision of the Athena mechanism</u>, to cover the supply of equipment to the military of partner countries.

The different options *within* the general budget of the Union are:

- <u>Adapting an existing EU instrument, namely the Instrument contributing to Stability and Peace (IcSP).</u> The IcSP Regulation currently limits financial support to a 'civilian stabilisation' context. The instrument is primarily geared to respond in situations of urgency, crisis or emerging crisis to prevent conflicts, followed by conflict-prevention, peace-building and crisis preparedness, and addressing global, trans-regional and emerging threats. A revision could involve adding specific provisions on assistance for capacity building in support of security and development, including to building and strengthening the capacity (equipment and training) of military actors of partner countries in exceptional situations, while excluding the provision of any lethal equipment.
- <u>Creating a 'facility' with existing EU instruments (e.g. DCI, ENI, IcSP)</u>. A facility could draw on existing instruments from a policy-perspective and financially. Such a facility would have to clarify that support to security sector reform can entail support directed to or with military actors. Limitations should be defined with regard to type and maximum amounts of concerned expenditures. There could be a need to amend existing instruments to fund military actors.
- **Proposing a new dedicated instrument** based on Article 209 TFEU within Heading 4 of the general budget of the EU, which would aim to support sustainable development by means of support to the security sector in third countries, including adequate training facilities for third country security sector personnel and better structures of governance and civilian oversight in the defence sector to the extent that such support cannot be provided through a CSDP mission or other EU instruments.
- Establishing an instrument by Council decision under the Common Foreign and Security Policy (CFSP).

Alternative policy instruments

The political Communication on the framework for SSR (see above) will provide guidance on how the EU and Member States support for civilian and military actors should be organised. However, this Communication cannot substitute to EU

Alternative/differentiated scope

- 1. <u>The thematic scope</u> may be considered at two basic levels:
 - A targeted scope ('train and equip'): Capacity building and enhancing the professional standards of military forces that includes the provision of training and equipment (non-lethal); this would specifically address the identified gap but would raise issues of coordination and synergy with other EU instruments and tools which also deal with security-sector reform, albeit in the civilian sphere.
 - A broader more inclusive scope (security sector reform) focused on the military as well as on civilian and/or police forces, as a vehicle to operationalise a strategy on foreign policy and security that would also be linked more comprehensively to 'The European Agenda on Security'. This would ensure a more holistic approach to security sector reform; to avoid risks of fragmentation, enhanced coordination of EU SSR-related interventions would be paramount.
- 2. <u>Geographic scope</u>: various options may be considered: focus on Africa only, going beyond Africa to cover also for example EU neighbours or beyond. In this regard, it should be taken into account that the Council and the European Council have advocated for a "flexible geographical scope": this would mean that any new instrument (or adapted instrument) should have the potential to be deployed in any third country. There again, the added value of IcSP is the absence of geographical limitation.
- 3. <u>Context</u>: the questions to whether such an adapted instrument should be used in conflict environments and/or in preand post-conflict settings needs also to be addressed. In this regard, the following options may be considered:
 - use in third partner countries in crisis situations;
 - use in non-crisis or stabilisation context within the broader support to security sector reform.

Preliminary proportionality check

The proposed legislative proposal/initiative will not exceed what is necessary to achieve the policy objectives.

The options proposed are in line with the principle of subsidiarity and proportionality as the objectives pursued can be achieved in a manner that will be only compatible with Member States efforts but also strongly coordinated with their interventions and those of other potential international actors.

C. Data Collection and Better Regulation Instruments

Data collection

Where available, existing studies, assessments and reports will be used. Lessons learned i.a. from the African Peace Facility both a flexible instrument for rapid interventions as well as more long term capacity building support, will be integrated. Gathering of relevant data will also take place through a public consultation (see below).

The lessons learned from the pilot studies concerning Mali and Somalia that fed into the Joint Communication on 'Capacity building in support of security and development' will also be used to develop the Impact Assessment.

Consultation approach

Following from the European Council conclusions of 19/20 December 2013 (EUCO 217/13) which emphasised "the importance of supporting partner countries and regional organisations, through providing training, advice, equipment and resources where appropriate, so that they can increasingly prevent or manage crises by themselves", work progressed during 2014 and intensified during 2015, when technical meetings and targeted consultations with Member States, the European Parliament and other stakeholders took place. In the Joint Communication "Capacity building in support of security and development – Enabling partners to prevent and manage crises"²¹, the Commission and the High Representative underlined their commitment to enhance coherence and coordination between EU security and development actions, as well as to improve the delivery of capacity building in support of security and development. The Council conclusions on CSDP of 18 May 2015 called to explore options in this regard, notably in terms of financial instruments.

A public consultation to gather additional views of stakeholders will take place in spring 2016. In view of the extensive consultations with experts which have already taken place, this public consultation is launched with an 8-week long timespan, with a view to delivering concrete proposals.

²¹ JOIN(2015) 17 final of 28 April 2015

Potentially interested stakeholders would be: security and development actors in the EU Member States, EU defence agencies, and international actors (UN, NATO, World Bank), civil society (specialised policy analysis organisations, such as think tanks), advocacy organisations and NGOs.

Further contribution(s) through specialised bodies such as the EU Institute for Security Studies may also be used to feed into the Impact Assessment.

Technical meetings will be held with relevant experts.

Will an Implementation plan be established?

🗆 Yes 🖾 No

D. Information on the Impact Assessment Process

- An Inter-service Steering Group (ISSG) will be set up and will meet regularly through the process up to the adoption of the selected proposal; it will in particular be tasked to contribute to the impact assessment work and to the consultation of stakeholders. The impact assessment will serve as an *ex ante* evaluation
- The Commission services and the EEAS will participate in the work of the ISSG.

E. Preliminary Assessment of Expected Impacts

Likely economic impacts

The EU budget would have to foresee funds for the proposed initiative. Within a constant ceiling of the multiannual financial framework for 2014-2020, the impact and possible financing of the initiative should be assessed; also taking into account funds allocated already under the existing instruments.

If a possible dedicated instrument were to be created outside the EU budget, there would be an additional financial impact on Member States, who would have to contribute to such an instrument.

For the countries concerned, the long-term economic and developmental impact of more professional armed forces is considerable, but given limited amounts involved and the difficulty of ascertaining causality, no ex ante estimation of impact is reliable. Individual actions should be measured against project-specific indicators.

Likely social impacts

More stable and secure societies are a precondition for sustainable development and increased wellbeing, thus reducing fragility- and conflict-related pressures.

Likely environmental impacts

N/A

Likely impacts on simplification and/or administrative burden

Amending an existing instrument would be in line with the overall EU simplification efforts regarding the number of instruments.

The additional activities to be implemented would have an administrative impact on the Commission services in charge of implementing and managing the instrument. Similarly, the administrative work for Commission services would increase, if they were tasked to implement/manage an instrument outside the EU budget (as for the EDF).

Likely impacts on SMEs

Depending on the type of equipment concerned, some SMEs could provide (some of) these items with a favourable impact on their economic activity.

Likely impacts on competitiveness and innovation

None expected directly from this initiative.

Likely impacts on public administrations

Not applicable to public administrations in EU Member States, no transposition measures are required. Public administrations in third countries can expect beneficial impact from the increased coherence brought about by the proposed initiative.

Likely impacts on third countries, international trade or investment

See under economic and social impacts, no measurable effect on trade or investment however the creation of a secure environment could have a positive effect on conditions for trade and investment.