

Annex 1

of the Commission Implementing Decision on the ENPI Regional South Annual
Action Programme 2013 –Part I

Action Fiche for Supporting rule-of-law-compliant investigations and prosecutions in the Maghreb region

1. IDENTIFICATION

Title/Number	Supporting rule-of-law-compliant investigations and prosecutions in the Maghreb region CRIS No. ENPI/2013/315-983		
Total cost	EUR 3 million EU contribution: EUR 3 million		
Aid method / Method of implementation	Project approach <i>Joint management</i> with an international organisation, UNODC		
DAC-code	15130	Sector	Legal and judicial development

2. RATIONALE

2.1. Sector context

Terrorism threatens the core values of the European Union and represents an assault on the rule of law, human rights and international peace and security. By violating people's fundamental rights it threatens not only individual civil and political rights but also economic, social and cultural rights. Insecurity is a major drawback for investment and development. Experience has shown that no country is immune to terrorism irrespective of its political structure or level of development.

Even though terrorist acts deny people their freedom and dignity, criminal justice systems must still ensure that the fundamental human rights of persons accused of terrorism are fully respected. There is consequently a need for a competent, independent and impartial judiciary, and law enforcement officials must work within a rule-of-law framework that ensures due process to the accused while, at the same time, protecting his/her civil liberties.

In order to ensure a stable transition to democracy and rule of law in the region, a deep and comprehensive reform of the judicial and security sector, including in the counter-terrorism context, is needed. This need has been promptly identified by the EU in the Joint Communication 'A partnership for

democracy and shared prosperity with the Southern Mediterranean'¹, and in the Joint Communication 'A new response to a changing European Neighbourhood'², which call for the support of a "deep democracy" through, inter alia, the reform of security and law enforcement sector.

As indicated in the recently adopted Joint Communication 'Supporting closer cooperation and regional integration in the Maghreb: Algeria, Libya, Mauritania, Morocco and Tunisia'³, terrorism and international crime issues are of paramount concern in the Maghreb region, in the wider Southern Neighbourhood and in the Sahel.

Moving from a confession-based to a rule-of-law-based approach to counter-terrorism investigations and prosecutions in the Maghreb region requires political will and specific technical knowledge. Initial training, exchanges of best practices and contacts are essential in terms of triggering further medium-to-long-term reforms, including the legal framework, accountability mechanisms, transparency, laws, procedures and skills/training. A solid criminal justice-based approach is key to bringing perpetrators to justice or extraditing them to another country in full compliance with international law and human rights. This will require stronger capacity on the part of national criminal justice systems. Even where all the legal instruments have been ratified and comprehensive national legislation is in place, criminal justice officials often lack substantive knowledge and skills to implement national counter-terrorism legislation in accordance with the rule of law and human rights.

The EU promotes a criminal justice approach to the fight against terrorism, based on full respect for the rule of law, international law and human rights. It is in both the EU's and the Maghreb countries' interests to promote this approach in the region and to support and participate in regional security co-operation.

The proposed action is the first EU-financed project in the Maghreb region to address the issue of how to pursue counter-terrorism investigations and prosecutions while respecting human rights and the rule of law. This initiative is fully in line with the priorities set out in the Maghreb Communication regarding democratic reforms and global threats, such as the modernisation of the justice system, the independence of the judiciary, respect for the rule of law, support for the judiciary, police and military school/training centres and the provision of training programmes. The aim is to provide, as appropriate, technical advice and support for capacity-building measures, technical exchanges and the sharing of best practice with the EU.

The proposed action is likewise fully in line with the priority set out in the Communication 'Increasing the impact of EU Development Policy: an Agenda for Change', which sees human rights, democracy and the rule of law as one of the policy priorities of the regional cooperation programmes it

¹ COM (2011)200 of 8 March 2011.

² COM(2011)303 of 25 May 2011.

³ Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Supporting closer cooperation and regional integration in the Maghreb: Algeria, Libya, Mauritania, Morocco and Tunisia', JOIN (2012) 36 of 17 December 2012.

also accords, with the UN Counter-Terrorism Strategy,⁴ and with the Rabat Memorandum on Good Practices for Effective Counterterrorism practice in the Criminal Justice Sector, adopted by the Global Counter Terrorism Forum (GCTF).

2.2. Lessons learned

Since 2003, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC/TPB) has been providing assistance, under the project ‘Strengthening the Legal Regime against Terrorism’ to the UN Member States in ratifying and implementing the international counter-terrorism legal framework. The main lessons learned from the United Nations⁵ and the EU⁶, along with the good practices included in the GCTF’s Rabat Memorandum, call for the following measures⁷:

- International and regional seminars should be organised to give prosecutors the chance to conduct high-level discussions on good practices and common challenges faced in terrorism cases. Capacity building at the national level is also needed to strengthen the effectiveness of investigations, prosecutions and adjudication of terrorist cases, through the provision of specialised training.
- It is essential for States to cooperate in the fight against terrorism through a modern, fair and efficient criminal justice system. Hence, capacity building is at the core of all effective counter-terrorism programmes.
- The mere existence of legal tools does not ensure that the criminal justice system will function in practice. This will require joint co-operation between investigative agencies, prosecutors and investigating judges, throughout the criminal justice chain.
- Strong and effective counter-terrorism policies are not incompatible with respect for human rights. In fact, counter-terrorism efforts will work best when grounded in human rights obligations and the rule of law.

2.3. Complementary actions

Complementarity and synergies will be established with all existing and future initiatives in this sector conducted by relevant national, regional and international actors, including:

⁴ In 2006, the United Nations General Assembly adopted a Counter-Terrorism Strategy (Resolution 60/288; reaffirmed in Resolution 62/272 and 66/282) in which UN Member States agreed for the first time on a common strategic approach to fighting terrorism. The global strategy sets out a plan of action for the international community based on four pillars: (1) measures to address the conditions conducive to the spread of terrorism; (2) measures to prevent and combat terrorism; (3) measures to build States’ capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and (4) measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

⁵ Following the recommendations emanating from seminars organised by the Counter-Terrorism Committee of the Security Council on ‘Bringing terrorists to justice’, a set of regional workshops for police officers, prosecutors and judges was organised by CTED. These enabled participants to share good practices by fostering an informal network of highly experienced counter-terrorism prosecutors.

⁶ The experience of the EU as recorded, for example, in the results of the ‘Strategic Seminar on Judicial Cooperation in Criminal Matters between the EU Member States and Southern neighbours of the EU’ held in Nicosia on 3/5 October 2012.

⁷ The Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice sector and Letter dated 5 April 2011 from the Chair of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council.

- Bilateral projects in the judicial and security sector, such as the Justice Programme⁸ in Algeria and in Tunisia⁹, training for lawyers in Tunisia¹⁰, the forthcoming peer-to-peer review of the security sector in Tunisia¹¹, the European Development Fund (EDF) project in Mauritania¹². Synergies will likewise be established with the relevant twinning projects in the Maghreb region, such as the establishment of a Financial Intelligence Unit in Morocco¹³.
- The regional projects ‘Strengthening democratic reform in Southern Mediterranean’¹⁴ implemented by the Council of Europe and covering Morocco and Tunisia, the ongoing regional projects Euromed Justice III¹⁵ and Euromed Police III¹⁶, the Instrument for Stability Sahel project in Mauritania, Mali and Niger¹⁷, and as well as the French regional JUSSEC project for the Sahel region¹⁸.

2.4. Donor coordination

The implementation of the action will be closely coordinated among donors and beneficiary countries with a view to boosting the prospects for sustainability of the planned activities. To avoid duplication and build synergies, close co-ordination will be maintained with EU Member States and other relevant countries to take on board what is currently being achieved.

The action will be implemented in the framework of the ‘UN family activities approach’, striving to optimise co-ordination between various members of the UN family. More particularly, CTED and UNODC are actively working on donor co-ordination within the UN system and through their active participation in donor forums, in particular the GCTF, including its criminal justice and rule of law working group. Coordination with international, sub-regional and regional organisations will be sought so as to avoid duplication and make multiple sources of expertise to countries on terrorism issues.

3. DESCRIPTION

3.1. Objectives

The overall objective of the action is twofold:

8 C(2007)6279 of 17 December 2007 http://eeas.europa.eu/delegations/algeria/projects/list_of_projects/19421_fr.htm.

9 C(2012)6858 of 28 September 2012 http://eeas.europa.eu/delegations/tunisia/documents/more_info/modernisation_du_systeme_judiciaire_fr.pdf.

10 C(2012)8833 of 05 December 2012 http://eeas.europa.eu/delegations/tunisia/documents/more_info/brochure_projetispa_fr.pdf.

11 http://eeas.europa.eu/delegations/tunisia/documents/more_info/rapfinal_ue_justice_dec2011_fr.pdf.

12 EuropeAid/133912/D/SER/MR.

13 MA P3A II MED/2005/17523 MAROC - Programme d'appui à la mise en oeuvre de l'Accord d'Association (PAAA II) .

14 C(2011)9544 of 22 December 2011 <http://south-programme-eu.coe.int>.

15 C(2010)5136 of 04 August 2010 <http://www.euromed-justice.eu>.

16 C(2010)5136 of 04 August 2010 <http://www.euromed-police3.eu>.

17 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132802.pdf.

18 <http://www.justice.gouv.ne/?q=node/76>.

- to increase the capacity of criminal justice and law enforcement officials to effectively investigate, prosecute and adjudicate terrorism cases in the Maghreb, in line with the relevant international legal instruments and Security Council resolutions;
- to strengthen the capacity of Maghreb countries to apply human rights norms, standards and good practices in counter-terrorism measures, and to assist them achieve human rights compliance in their criminal justice responses to terrorism.

The action's more specific objectives are to:

- 1) strengthen regional capacity and implementation of long-term collaborative counter-terrorism measures in the Maghreb;
- 2) strengthen regional and national-level analysis, formulation of response measures and policy advocacy regarding human rights compliant investigation and prosecution of terrorist cases, to ensure that criminal justice responses to terrorism that fully integrate fully incorporate rule-of-law-standards and are founded on an evidence-based system;
- 3) strengthen the capacity of the Maghreb countries for enhanced participation in regional and global counter-terrorism efforts, by supporting them to strengthen their national counter-terrorism legal framework and capacity for its implementation.

3.2. Expected results and main activities

The main activities for the period 2013-2016 will include regional and national activities and in-country technical assistance, and online training courses. These, together with the training-the-trainers workshops, will ensure effective support, long-term sustainability and impact of the action.

Beneficiary countries: Maghreb region¹⁹.

Under *specific objective 1* the **expected result** is:

- to develop a better understanding among participants of their common challenges in bringing terrorists to justice at the national and regional level, and to develop possible ways of addressing these challenges, together with stronger EU-Maghreb international and regional co-operation on counter-terrorism, achieved by promoting good practices, information exchange and networking among criminal justice officials.

This result will be achieved by way of regional activities, including regional workshops targeting — but not limited to — the following topics: challenges posed by a criminal justice preventative response to terrorism; special

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According to Article 27 of Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, the Commission may decide, when adopting action programmes of the type referred to in Article 12 or the special measures referred to in Article 13, that countries, territories and regions eligible for assistance under other Community external assistance instruments and the European Development Fund are eligible for measures under this Regulation where the project or programme implemented is of a global, regional or cross-border nature. Therefore this project may be extended to third countries not listed in the Annex of Regulation (EC) No 1638/2006 if needed.

investigative techniques used in the prosecution of complex terrorism-related offences; cross-border co-operation on counter-terrorism; moving from a confession-based to an evidence-based system of counter-terrorism investigations and prosecutions, in line with the rule of law and human rights.

Under *specific objective 2* the **expected result** is:

- Greater capacity and number of relevant criminal justice officials to effectively investigate, prosecute, bring to justice and adjudicate terrorism cases.

This result will be achieved by way of national specialised training and in-country technical assistance, and of specially adapted online training courses aimed at supporting national and regional training institutions to integrate and deliver human rights-specific dimensions of counter-terrorism in their curriculum. The needs identified at the regional meetings will subsequently be addressed at national level through national specialised training events and in-country technical assistance, which will provide first-hand expertise for judicial officers and related authorities. The objective of the national activities will be to ease the transformation from confession-based to evidence-based investigations and prosecutions, fully in line with the rule of law and human rights. This would include reviewing and updating legislation and oversight mechanisms.

The expertise of the UNCTED informal prosecutors network will also be made available for national capacity-building activities. Technical Assistance missions at the request of beneficiary countries can be arranged.

Under *specific objective 3* the **expected result** is:

- dissemination of experiences and information from the training events at national level using the train-the-trainer approach, by working together with judicial training institutions within the participating Member States.

This result will be achieved by way of train-the-trainers workshops for criminal justice officials, based on the online courses and building upon the expertise acquired by the participants, in close conjunction with national magistrates' schools and high judicial councils in the beneficiary countries.

3.3. Risks and assumptions

The main general assumption is the commitment of national authorities in the Maghreb region to work together and with others to achieve the expected results, and to do whatever is needed to implement the proposed activities in a timely manner, and the readiness of regional and international players to participate in the project and provide the required level of collaboration and input.

There are risks linked to political instability in the region and to possible changes of government or regimes, these risks need continuous monitoring. The proposed results are formulated in a way that ensures that the project is flexible; takes account of each country's specific circumstances as well as

the regional dimension; implementation does not depend on a participation of all the countries in all the planned activities.

Any prioritisation difficulties should be tackled by supporting the technical and political levels and strengthening overall coordination with the help of a Joint Steering Committee. If difficult diplomatic relations impedes the smooth running of the project, activities will be carried out at technical level only.

Assumptions encompass the willingness and commitment of the stakeholders in the Maghreb partner countries throughout the life of the project; the synergies and complementarities with other regional activities; good project management; an enabling environment in partner countries for stakeholder participation.

3.4. Cross-cutting issues

The project's specific objectives directly concern good governance issues, with regard to promoting the rule of law and human rights in the beneficiary countries, and consequently areas of immediate social and economic relevance. The project will also help strengthen the protection of fundamental rights in respect of witnesses, victims and other people involved in terrorism trials. Women will be encouraged to play a part, through the active participation of female law enforcement officials and prosecutors and other criminal justice officers in the different sessions, and by placing a specific focus on women accused of terrorism-related activities.

3.5. Stakeholders

The target stakeholders include:

- (junior) magistrates;
- law enforcement officials involved in investigating terrorist offences;
- judges and prosecutors serving in courts and tribunals;
- officials from the Ministry of Justice, Ministry of Interior and Ministry of Foreign Affairs;
- Police forces, Gendarmerie, Special Police Units (e.g. anti-terrorism), members of specialised parliamentary committees;
- Relevant civil society representatives.

4. IMPLEMENTATION ISSUES

4.1. Financing agreement

In order to implement this action, it is not foreseen to conclude a financing agreement with the partner country, referred to in Article 184(2)(b) of the Financial Regulation.

4.2. Indicative operational implementation period

The indicative operational implementation period of this action, during which the activities described in sections 3.2. and 4.3. will be carried out, is 48 months, subject to modifications to be agreed by the responsible authorising officer in the relevant agreements.

4.3. Implementation components and modules

Joint management with an international organisation

This action with the objective of increasing the capacity of criminal justice and law enforcement officials to effectively investigate, prosecute and adjudicate terrorism cases in the Maghreb, and to apply human rights norms, standards and good practices in counter-terrorism measures, will be implemented in joint management with UNODC. This implementation is justified because the terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC/TPB) has vast experience in the sector, being the lead UN provider of legal technical assistance on counter-terrorism issues, and having carried out a number of national-level direct technical assistance activities in all the beneficiary countries, as well as having established field presences in most of the targeted countries. Joint management with this international organisation in accordance with Article 53d of Financial Regulation 1605/2002 is possible because the organisation is bound by a long-term framework agreement (the Financial and Administrative Framework Agreement (FAFA) concluded between the European Union and the United Nations) and the action to be financed has been formulated jointly by the European Commission and UNODC / Counter-Terrorism Committee Executive Directorate (CTED).

Project activities will be implemented by the Counter-Terrorism Committee Executive Directorate (CTED) and the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC/TPB). CTED and UNODC have consolidated experience of working closely together to enhance the capacities of Member States to bring terrorists to justice. CTED has successfully run a series of high-level counter-terrorism prosecutors' workshops, which included also countries from the Maghreb. CTED will carry out the regional activities, while UNODC/TPB will implement the national ones and take care of general project management. The expertise of the CTED prosecutors network will be available for the national activities.

A joint steering committee, at national and regional level, with participation of observers and composed of experts from relevant European Commission services, EU Delegations, CTED, UNODC and other relevant stakeholders, such as the EU Counter-Terrorism Coordinator, will provide policy orientations and guidance for the programme smooth implementation, its objectives and content.

The international organisation will, in line with the FAFA, ensure that all contracts implementing the action are awarded and implemented in accordance with the procedures and standard documents laid down and published by UNODC.

The change of method of implementation constitutes a substantial change except where the Commission "re-centralises" or reduces the level of budget-implementation tasks previously entrusted to the international organisation.

4.4. Scope of geographical eligibility

The responsible authorising officer may extend the geographical eligibility in accordance with Article 21(7) of the basic act.

4.5. Indicative budget

The budget allocated for this action is EUR 3 million, to be allocated under joint management with UNODC.

Module	Amount in EUR	Third party contribution (indicative, where known)
– Joint management with UNODC	EUR 3 million	Not known
Totals	EUR 3 million	Not known

4.6. Performance monitoring

The European Union may carry out monitoring missions, using external expertise according to need. UNODC will analyse the conclusions and recommendations of any evaluations and decide jointly on any follow-up action to be taken and any adjustments needed, including reorientation of the action if necessary.

The results-based monitoring framework will include specific performance indicators in direct reference to the project's expected results. These indicators will verify progress made towards achieving the project objectives and prospective long-term impact.

4.7. Evaluation and audit

The Commission is entitled as a donor to conduct its own evaluation or results-oriented monitoring missions (the cost of which is outside the scope of this contribution). Project-related evaluations will be undertaken in accordance with the Financial and Administrative Framework Agreement (FAFA) signed by the European Commission and the United Nations on 23 April 2003.

4.8. Communication and visibility

Communication and visibility will be in line with the standard provisions set out in the FAFA and in the General Conditions and as per the Joint Visibility Guidelines of the EC-UN Actions in the field²⁰.

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Joint Visibility Guidelines of the EC-UN Actions in the field
http://ec.europa.eu/europeaid/work/procedures/financing/international_organisations/other_documents_related_unit_ed_nations/document/joint_visibility_guidelines.pdf.