

Brussels, 5 June 2020

Dear 

We thank you for your letter received on 30 April 2020 and take good note of the points of concern you raise on different programmes funded by the EUTF for Africa in several areas. We are pleased to share with you some clarifications on some of the issues you raised.

On specific programmes (data protection and biometrics)

As to your comment on project “**T05-EUTF-HOA-REG-09**”, please note that the BMM project is not providing any surveillance equipment. In the area of biometric data, BMM provided technical equipment for the IOM’s Migration Information and Data Analysis System (MIDAS) in Djibouti, Somalia, and Sudan. This includes document readers, webcams and fingerprint readers to be used at the immigration desk at airports. MIDAS enables countries to collect, process, store and analyse traveller information to monitor, more effectively, those entering and exiting their territory while providing a sound statistical basis for migration policy-related planning. IOM advises governments on how to implement the necessary institutional, technical and physical safeguards to strengthen current data protection practices in line with international standards. The border officials in countries are trained on the correct application of MIDAS and the correct administration of internationally established data protection guidelines.

In the framework of the BMM project, IOM also established e-visa systems in Djibouti and Kenya, which also includes the collection of biometric data (biometric photos) which are also stored in line with international standards. The correct use of this equipment is monitored throughout the duration of the program.

T05-EUTF-NOA-REG-07 BMP Maghreb is a regional programme, funded by the North of Africa Window of the EUTF for Africa, , focusing on procurement and capacity building initiatives directly related to strengthening operational border management capacities of Morocco and Tunisia.

In Tunisia, the project that supports the Maritime National Guard (MNG) aims to align both means and methods of work to international standards in the domain of maritime security and safety. The project will enable the Tunisian MNG to provide more timely assistance to persons at sea, and support stronger accountability of crews concerning the activities they carry out. Several training modules are planned to strengthen the capacity of these crews and other National Guard staff in the management of migratory flows and Search and Rescue (SAR) operations.

In Morocco, around 90% of the budget is allocated to the purchase of vehicles (cars, buses, motorcycles, off-road vehicles).

On the request for documents related to some EUTF Programmes sent in January 2020, we would like to confirm that the access to documents requests addressed to DG DEVCO are currently being handled. The access to document request addressed to DG NEAR has been answered already in full transparency and to the greatest extent possible.

We would like now to refer to the **specific questions you raise at page 7-8 of your letter.**

Under question 1, you request to *“provide more details on what measures to protect human rights, notably by providing capacity building to ensure that partner countries enforce a proper legal framework, will be undertaken”*.

The EUTF programmes supporting the modernisation of the civil registry systems and e-identification include a preliminary diagnosis of the national legal framework (including data protection legislation), as well as components of capacity building for the government staff working with civil registration (on the entire applicable legal framework, not only data protection).

EUTF programmes working on civil registration do not provide equipment for identification, nor training to operate equipment for identification. Most of the EUTF programmes provide capacity building for reform of the civil registration system, including the use of computers and databases for registering population.

Under question 2, you request to provide more information on *“how the fund understands a proper legal framework, with regard to the equipment and training being provided to non-EU countries, including information on what sources were used to inform this understanding, and who is involved in its promotion”*.

Partner countries, as owner of the databases, manage them and national officials collect data and feed the system. EU Delegations advocate for data protection. Moreover, EUTF programmes advise national authorities on standards for data protection and privacy and on how to adapt national legislation to respect such standards. EUTF programmes base all recommendations for legal frameworks on EU standards for digital identification such as Regulation (EU) 2016/679 (GDPR), E-IDAS, Directive 2016/680. This is done in full respect of international conventions ratified by the EU (the Charter of Fundamental Rights, the European Convention on Human Rights and Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data). Moreover, the EU’s support to partner countries is also based on broad partnership frameworks and the respect of the EU financial regulations.

In relation to data protection, EUTF projects such as WAPIS (Western African Police Information System), implemented by INTERPOL, promote, in partnership with ECOWAS, in each Western African country the transposition of the 2010 ECOWAS supplementary act on personal data protection, which has drawn from best practices, notably coming from Europe.

Regarding IMSI Catcher in Niger, please note the following:

- The 2015-036 Nigerien Law sets out a strict framework for the “Division des Investigations Spéciales” (DIS), to which the Joint Investigation Team belongs;
- All the investigations are conducted under the authority of the prosecutor or the investigating magistrate designated by the Ministry of Justice;
- Article 8 of the above mentioned Law stipulates that the use of surveillance of landline or mobile phone lines can be requested by the investigating magistrate, based on solid and consistent evidence;

- In the course of the project, the EU Delegation to Niger will assess if the actual procurement of such equipment is justified and if the proper safeguards are provided;
- If applicable, Council Regulation (EC) N° 428/2009 governs the control of exports, transfer, brokering and transit of such dual-use items (see Commission Delegated Regulation (EU) 2018/1922)

Under question 3, you request to provide more information on “*how the Fund ensures that personal data collection is undertaken and managed in accordance with international data protection standards. For example, does the fund promote fundamental principles found in the Charter of Fundamental Rights of the EU, the European Convention on Human Rights and Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which have been ratified by all EU Member States, as well as specific EU data protection, data privacy and security standards, found in legal instruments governing the processing of personal data for either administrative (e.g. GDPR) or law enforcement (e.g. Directive 2016/680) purposes? How does the fund ensure that adherence to these standards is maintained even after the implementation/completion of the aforementioned projects?*”

The EUTF does not have its own legal framework and therefore applies the same general rules and follow-up systems applicable to other EU development Instruments.

In the case of the civil registry and e-Identification programmes where the EU funds provide hardware and software (the case of Mali and Senegal), the EU Implementing Partners provide the central databases, the computers and the necessary connexions between them. Programmes also ensure that access to the databases is secured.

As stated before, these programmes also foresee a review of the data protection framework, although, as in any other development project, the EU cannot not oblige partner countries to fully subscribe the EU legislation as a pre-condition to provide the software containing the databases. Moreover, upon completion of programmes, the EUTF cannot follow-up any longer, what the partner country does with the tools provided by the programme.

Under the regional program BMP Maghreb, the International Centre for Migration Policy Development (ICMPD) is committed to compliance with Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data. All staff and contractors are thus required to comply with data protection principles, which is confirmed in handover certificates and nationally provided export certificates¹.

Under question 4, you request to provide more information “*on what risk assessments or due diligence was undertaken to ensure the biometric databases being supported are lawful*”.

¹ In particular, ICMPD uses for this contract the following preamble: “Vu le Règlement (UE) N°1215/2012 du Parlement Européen et du Conseil du 12 Décembre 2012 Concernant la compétence judiciaire ; la reconnaissance et l’exécution des décisions en matière civile et commerciale. Vu le Règlement (UE) N° 232/2014 du Parlement Européen et du Conseil, du 11 Mars 2014 ; Instituant un Instrument Européen de Voisinage. Vu le Règlement (UE) 679/2016 du Parlement Européen et du Conseil, du 27 Avril 2016 ; relatif à la Protection des Personnes Physiques à l’Egard du Traitement des Données à Caractère Personnel et à la Libre Circulation de ces Données ; et abrogeant la directive 95/46/CE (règlement général sur la protection des données). »

Each programme is based on an assessment of the existing national legislation and the existing databases. Projects supported by the EU assess whether there are any gaps in the legislation, including on data protection and privacy. Additionally, project support the Government in drafting legislation which provides legal basis for biometric databases.

In case you wish to make our reply publicly available, you may do so provided that you publish our reply in full (as opposed to quoting parts of the message only) and that you do not disclose any personal data of DEVCO staff.

Best regards,

**The Coordination Team
of EU Emergency Trust Fund for Africa**