

N.21  
DEL 6/02/2020



## *Agenzia Italiana per la Cooperazione allo Sviluppo*

### **IL DIRETTORE**

- VISTA la Legge n.125 dell'11/08/2014 ed in particolare l'art. 18, che stabilisce che all'Agenzia è attribuita autonomia organizzativa, regolamentare, amministrativa, patrimoniale e di bilancio;
- VISTO il Regolamento recante lo Statuto dell'Agenzia Italiana per la Cooperazione allo Sviluppo, approvato con DM n. 113 del 22/07/2015;
- VISTO il decreto del Presidente del Consiglio dei Ministri del 2 novembre 2015, pubblicato sulla Gazzetta Ufficiale, Serie Generale n. 293 del 17 dicembre 2015, recante "Approvazione della dotazione organica dell'Agenzia italiana per la Cooperazione allo Sviluppo" e modificata dall'art.1 comma 336 della L.145/2018;
- VISTO il D.P.C.M. del 4 aprile 2019, registrato alla Corte dei Conti il 13 maggio 2019, con il quale è stato conferito al dott. Luca Maestripieri l'incarico di Direttore dell'Agenzia Italiana per la cooperazione allo sviluppo ed il successivo D.P.C.M. del 20 novembre 2019, registrato alla Corte dei Conti il 6 dicembre 2019, di conferma del suddetto incarico;
- VISTO il decreto del Ministro degli Affari Esteri e della Cooperazione Internazionale del 15 dicembre 2015 n. 2438, recante approvazione del "Regolamento di organizzazione dell'Agenzia italiana per la cooperazione allo sviluppo" e successive modifiche e integrazioni;
- CONSIDERATO che l'art. 27 della Legge n.125 dell'11/08/2014 espressamente prevede che l'Italia riconosca e favorisca l'apporto delle imprese ai processi di sviluppo dei Paesi partner;
- CONSIDERATO che l'AICS ha avviato con la Direzione Generale per la Cooperazione allo Sviluppo del Ministero degli Affari Esteri e della Cooperazione Internazionale e con Eni un tavolo tecnico di coordinamento al fine di individuare azioni congiunte nei Paesi prioritari e per settori di mutuo interesse allo scopo di rendere più concreto il partenariato pubblico-privato sancito dall'Agenda 2030;
- CONSIDERATO che in data 23 ottobre 2019 si è tenuta la prima riunione del tavolo tecnico di coordinamento presso il MAECI-DGCS e che tra le parti, sopra menzionate, si è giunti alla conclusione di programmare una collaborazione pluriennale in Mozambico per aree di cooperazione allo sviluppo nei settori dell'agricoltura

e sicurezza alimentare, della formazione professionale e istruzione, dell'accesso all'energia, della salute e nutrizione e dell'ambiente;

COSIDERATO

che la Sede locale AICS a Maputo e la Eni Rovuma Basin B.V. intendono cooperare per condividere obiettivi al fine di realizzare progetti da sviluppare congiuntamente o progetti separati da coordinare congiuntamente;

## DETERMINA

### Art.1

Di approvare, per i motivi sopra esposti e nella versione dell'Annex A della presente determina, il testo del Protocollo di Intesa, completo dell'Annex1, per una durata di quattro anni, a decorrere dalla effettiva sottoscrizione delle Parti, prorogabile per espressa volontà delle Parti

### Art.2

Di dare atto che il Protocollo d'Intesa in oggetto non prevede oneri a carico delle Parti.

### Art.3

Di dare mandato al competente Responsabile per la trasparenza e la prevenzione della corruzione per la pubblicazione sul sito istituzionale dell'AICS, nella sezione "Amministrazione Trasparente", del Protocollo d'Intesa ed il relativo Allegato.

### Art.4

Di dare mandato al competente Direttore della Sede locale AICS a Maputo per la sottoscrizione del Protocollo d'Intesa.

Roma, 6/02/2020  
N.6

IL DIRETTORE  
Luca Maestripieri



Allegato: Memorandum of Understanding

# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN:**

**ENI ROVUMA BASIN B.V.**

**AND**

**AGENZIA ITALIANA PER LA COOPERAZIONE ALLO  
SVILUPPO, MAPUTO OFFICE**

**MAPUTO, \_\_\_\_\_ de \_\_\_\_\_ 2020**

Maputo, \_\_/\_\_/2020

This memorandum of understanding (“**MoU**”) is entered into on this \_\_\_\_ day of \_\_\_\_\_ 2020 (“**Effective Date**”) by and between:

The **Italian Agency for Development Cooperation** with Headquarters in Rome through its Office in Maputo, Mozambique (hereinafter referred to as “**AICS Mozambique**”), duly represented by **Ginevra Letizia, AICS Representative in Mozambique,**

and

**Eni Rovuma Basin B.V.**, a company organized and existing under the laws of the Netherlands, whose registered office is at Strawinskylaan 1725, 1077 Amsterdam, the Netherlands, and having its branch at Rua dos Desportistas, n.º 918, Edifício JAT V-3, 1.º / 2.º Andares, Maputo, Republic of Mozambique (hereinafter referred to as “**ERB**”), duly represented herein by **Filippo Maioli**, in his capacity as **Managing Director & General Manager.**

ERB and AICS Mozambique are hereinafter collectively referred to as the “**Parties**” and each individually referred to as “**Party**”.

#### **WHEREAS**

- i. The Italian Development Cooperation system, according to the article 27 of Law 125/2014, recognizes the significant contribution that can be made by the private sector to the development processes of partner countries.
- ii. ERB operates in line with the business model and in the framework of the policies of Eni S.p.A. as defined, in particular, in the Eni Cooperation Model:
  - considering sustainability, innovation, environmental protection, respect of human rights and compliance with safe and fair working standards as part of its mission and guiding principles of its actions and initiatives;
  - actively pursuing the reduction of social and economic gaps in the hosting Countries by developing energy sources and providing access to sustainable energy at scale in said Countries;
  - interacting on a continuous basis with local institutions and stakeholders in order to identify the necessary interventions to respond to the needs of the local communities.



- iii. ERB and AICS Mozambique, in accordance with their common interest in the eradication of poverty and tackling major challenges, such as climate change, in line with their goals and policies and with a sustainable and responsible approach for improving the livelihood of communities in the developing areas, have considered to collaborate for local development starting from Mozambique.
- iv. It is understood that no profit should in any case be generated on account of ERB or Eni in the implementation of the above mentioned Cooperation business model.

**NOW, THEREFORE**, in consideration of the mutual covenants and premises contained herein, which constitute an integral part of this MoU, the Parties agree as follows:

#### **Clause 1 - SCOPE**

1. The purpose of this MoU is to state the Parties' interest in cooperating to identify and evaluate common spaces of cooperation by sharing objectives and possible projects in the areas better described in Article 2, in the view of creating positive synergies and maximizing the beneficial impacts of the Parties' respective actions. The identified spaces of cooperation (*hereinafter referred to as "Initiatives"*) may consist, as the case may be, in one project to be jointly developed or multiple separate projects to be jointly coordinated.

2. It is understood that the implementation of any Initiative shall, in any event, be subject to the execution of a separate agreement by and between the Parties and/or other public or private entities which may have been, from time to time, deemed suitable and eligible by the Parties for the purpose of the specific Initiative (*hereinafter referred to as "Specific Agreement"*).

Any such Specific Agreement as well as the suitability and eligibility of any signatory entity other than the Parties shall be subject to each Party's prior approvals.

3. For the sake of clarity, this MoU does not give rise to or create on either Party any right, obligation or liability to proceed with the negotiation and/or to enter into any agreement in relation to any Initiative, which may be identified by the Parties. Failure by the Parties, for whatsoever reason, to reach any agreement on the matters under negotiation or discussion pursuant to this MoU, will not expose the Party, which has interrupted the negotiation or failed to agree, to any liability of any kind towards the other Party.

#### **Clause 2 - AREAS OF COOPERATION**

1. The Parties will evaluate specific Initiatives within the following areas of cooperation (**"Areas of Cooperation"**):

- Agriculture and Food Security;
- Vocational Training and Education;
- Access to Energy;
- Health and Nutrition;
- Environment.

2. It is understood that the Parties are free to identify further Areas of Cooperation.

### **Clause 3 - PARTIES' CONTRIBUTION**

1. For any specific Initiative, each Party's contribution may be financial (including, for instance, budget allocation, fundraising, securing donors and the like) and/or in kind (including, for instance, know-how, expertise, assets and the like) ("Contribution").
2. Modalities, terms and conditions of each Party's Contribution will be agreed and regulated in each Specific Agreement, taking into account that each Initiative's needs, structure as well as other partners from time to time involved and their contribution.
3. However, it is understood that:
  - Where applicable pursuant to the Specific Agreement concerned, each Party will carry out procurement procedures in compliance with its own internal procedures, guidelines and principles;
  - No transfer of funds will occur between the Parties.

### **Clause 4 - STEERING COMMITTEE**

1. The Parties shall set-up a Steering Committee ("SC").
2. The SC will consist of two (2) nominated representative of ERB and two (2) of AICS Mozambique. Each representative will have a substitute who will be entitled to replace him if necessary.
3. The SC will meet at least twice a year, or at the request of one of the Party, and will be responsible for:
  - a) Defining strategic criteria and policy guidance for the scouting of potential Initiatives;
  - b) Discussing and agreeing upon new Area of Cooperation of mutual interest;
  - c) Defining geographical areas of mutual interest on which planning, programming and implementing Initiatives in the Areas of Cooperation, in order to create synergies and maximize impact generated by each Initiative,
  - d) Identifying public or private entities which may potentially be involved as partners in the

- contest of specific Initiatives;
- e) Appointing the members of the Working Groups (“WG”), pursuant to the terms of Annex 1 of the present MoU;
  - f) Approving:
    - i. the WG’s proposals relative to the execution of new Specific Agreements, including the opportunity to involve any additional partner;
    - ii. the key deliverables of the project, identified as such in the Specific Agreement concerned, submitted by the WG further to their validation in accordance with the terms of Annex 1. For the purpose of this point (ii), “approving” means deciding, based on a discretionary opinion, whether the Initiative shall be cancelled, may continue in accordance with the terms of the Specific Agreement or a change shall be implemented, providing, in the last case, the relevant indications, to be taken into account at a project level.
  - g) Providing indications, at a project level, throughout the implementation of the Initiatives.
  - h) engaging with the governmental authorities (at a national, provincial and/or district level), taking into due account the policies and instructions of each Partner;
  - i) Monitoring the implementation of the Specific Agreements, also through the periodical reporting on the progress of the Initiatives submitted by the WG.
4. In the exercise of its functions, the SC will ensure that the Initiatives are constantly aligned with the strategic objectives and plans of the Government for the social development of Mozambique in the Areas of Cooperation concerned.
5. All the decisions of the SC shall require the unanimous vote of the Parties’ representatives.
6. Should the involvement of any additional partner be approved by the SC for the purpose of any specific Initiative under this MoU, the structure and/or functions of the SC and the WGs may be adjusted through a dedicated addendum to this MoU, to be agreed by the Parties.
7. Each Party shall bear all necessary costs and expenses in relation to the activity of their respective representatives in the SC.

#### **Clause 5 - INTELLECTUAL PROPERTY RIGHTS**

1. This MoU shall not, under any circumstances, be deemed to be a transfer of intellectual property rights of any type, whether registered or not (including, but not limited to, patents, copyrights, trademarks, domains, know-how and commercial secrets) between the Parties.
2. Any and all intellectual property rights, in particular copyright on material such as statistics, software



and designs, made available by a Party to the other for the purposes of this MoU shall remain property of the originating Party.

3. The scientific results of the activities deriving from the implementation of the Initiatives, including the Initiatives' proposals, the material documents as well as the texts and any other official acts that will be produced by one Party under this MOU (the "Material") will remain the property of the producing Party. Copyright on Material produced jointly by the Party shall be vested in both Party.

#### **Clause 6 - CONDUCT OF THE PARTIES**

1. Each Party, with regard to the performance of this MoU (i) warrants that such Party and its Affiliates have not made, offered or authorized and (ii) covenants that such Party and its Affiliates will not make, offer, or authorize, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official, or any other individual or entity where such payment, gift, promise or advantage would violate anticorruption laws. In addition, each such Party with regard to the performance of this MoU (i) warrants that such Party and its Affiliates have complied with, and (ii) covenants that such Party and its Affiliates will comply with anticorruption laws.

2. In the event of any proved breach of this Article or of anti-corruption laws in relation to the performance of this Memorandum, each Partner shall have the right to immediately suspend its activities hereunder and to terminate this Memorandum, save the right to claim any damages and costs deriving from such breach.

For the purpose of this MOU, "Affiliates" means in relation to any legal entity, a legal entity that directly or indirectly controls, that is directly or indirectly controlled by, or that is directly or indirectly under common control with, another legal entity.

#### **Clause 7 - DURATION**

1. This MoU shall be effective for a period of four (4) years from the Effective Date and may be extended upon mutual agreement of the Parties.

2. Notwithstanding the foregoing, this MoU may be terminated by either Party, at any time and for any reason, without incurring liability of any kind whatsoever upon providing sixty (60) days prior written notice to the other Party.



3. The expiry or termination of this MOU for whatsoever reason shall not affect the validity of any Specific Agreements executed prior to such date as well as any rights or obligations accrued before the termination date.
4. The provisions of this MOU which, by their nature, extend beyond its expiry or termination shall survive any such expiration or termination.

#### **Clause 8 - CONFIDENTIALITY**

1. The existence and the terms of this MOU, as well as any information of any kind exchanged between the Parties and their respective Affiliates under this MOU (collectively, “**Confidential Information**”) shall be held confidential and shall not be disclosed to any third parties without prior written consent of the disclosing Party for the duration of this MOU and until the expiry of three (3) years after the MOU termination date or expiry date.
2. The provisions of this Article 8 shall not apply:
  - i. to the employees, officers and/or directors of the receiving Party having a need to access the Confidential Information for the purpose of the performance of the activities contemplated in the MOU;
  - ii. to the employees, officers and/or directors of an Affiliate(s) of the receiving Party having a need to access the Confidential Information for the purpose of the performance of the activities contemplated under the MOU;
  - iii. to the extent the Confidential Information is required to be disclosed by operation of law or any applicable stock exchange regulations or any binding judgment or order, or any requirement of a competent authority, provided that the Party obliged to make the disclosure shall, to the maximum extent allowed, have given prior written notice to the other Party;
  - iv. to the extent required to preserve and/or enforce this MOU in any appropriate dispute resolution forum;
  - v. to the extent that the Confidential Information is reasonably required to be disclosed in confidence to a Party’s professional advisers or consultant, for use in connection with matters contemplated in this MOU, provided that prior to making any such disclosure, a Party shall obtain by each receiving person a written confidentiality undertaking, substantially in the same form and content as this Article 7, which shall:
    - a) include the receiving person’s commitment to maintain the Confidential Information strictly confidential and to use it solely for the stated purpose;
    - b) be enforceable by either Party.

With respect to outside legal counsel, a Party shall only be required to ascertain that such legal counsel is bound by an obligation of confidentiality;

- vi. to any Confidential Information which, at the time of disclosure by a Party, is within the public domain or has become part of public knowledge (other than through any breach of the confidentiality obligations herein by the receiving Party).

#### **Clause 9 - PRESS RELEASE**

1. No public announcement or press release relative to or in connection with the existence of this MOU or its subject matter shall be made or issued by or on behalf of either Party without the prior written approval of the other Party.

#### **Clause 10 - NO REPRESENTATIONS AND WARRANTY UNDERTAKEN**

1. The Parties shall use reasonable endeavors to ensure that, in so far as possible, any information provided for use in any activities pursuant to this MOU is accurate.
2. However, neither Party gives any warranty to the other as to the accuracy, fitness for purpose or suitability of any information including Confidential Information so provided to the other Party.

#### **Clause 11 - LIMITATION OF LIABILITY**

1. The liabilities of the Parties to each other for breaches of this MOU shall be limited to direct damages only and no Party shall be liable to the other, whether in contract, tort, law or otherwise, for any indirect, special or consequential losses and/or loss of production, loss of profit or anticipated profit, loss of revenue or anticipated revenue, business interruption, loss of use of facilities, loss of contract or other business opportunity, arising out of or resulting from the performance or non-performance of this MOU or any breach of this MOU.

#### **Clause 12 - NON-ASSIGNMENT**

1. Neither Party may assign its rights and/or obligations or any part thereof to any third party, except with the prior written consent of the other Party.

#### **Clause 13 - ENTIRE AGREEMENT**

1. This MoU and its Annex constitutes the entire agreement between the Parties in respect of the subject matter and supersedes all prior correspondence, negotiations, understandings, discussions and agreements, either written or oral, between the Parties with respect to its subject matter.

2. This MoU may not be altered, amended or modified except where agreed by the Parties in the form of a supplemental written agreement signed by both Parties. It is agreed and understood that any alteration, amendment or modification of the MoU contained in e-mail exchanges or correspondence between the Parties shall not be effective unless and until reduced in the form of such a supplemental written agreement signed by both Parties.

#### **Clause 14 - RELATIONSHIP OF THE PARTIES**

1. This MoU shall not be construed as to create any association, joint venture or partnership among the Parties nor to impose any partnership obligation or liability upon a Party.

#### **Clause 15 - WAIVER**

1. The rights, powers and remedies of any Party (whether arising under this MoU or under any applicable law) shall not be capable of being waived, except where expressly waived in writing by the Party concerned.

#### **Clause 16 - SEVERABILITY**

1. If any provision of this MoU shall be held to be invalid, illegal or unenforceable, then, to the extent permitted by law, the validity, legality and enforceability of the remaining provision hereof shall not in any way be affected or impaired thereby.

The Parties undertake to replace any invalid, illegal or unenforceable provision by a new provision, which – taking into account of the objective and purpose of this MoU – shall deviated as little as possible from the original one.

#### **Clause 17 - COSTS**

1. Each Party shall bear the costs, losses or damages of any type (“Costs”) suffered as a result or howsoever in connection with its participation (or its Affiliates’ participation) to the activities foreseen by this MoU, including but not limited to any Cost associated with the personnel involved in the activities carried out by **the Steering Committee and Working Groups**, indemnifying and holding harmless the other Party from any such Cost.



#### **Clause 18 - NON EXCLUSIVITY**

1. This MoU is entered into on a non-exclusive basis, and neither Party is restricted in any way from holding any discussions or entering into agreements with any third parties with respect to the matters which are identical or similar to those envisaged in this MoU.

#### **Clause 19 - NOTICES**

1. Any notice, request, demand or other communication required to be given to or by a Party under this MoU or any notice which any Party may wish to give to the other Party shall be in writing and in English and shall be hand-delivered, sent by facsimile or by courier or pre-paid post mail to the Party intended to receive the same, as the case may be, and shall be effective upon receipt at the following address:

**For ERB:**

[•]

**Attention:** Stefano Saviano, Sustainability Manager

**E-mail address:** stefano.saviano@eni.com

**For AICS Mozambique:**

[•]

**Attention:** Ginevra Letizia, AICS Representative in Mozambique

**E-mail address:** ginevra.letizia@aics.gov.it

2. A notice or such other communication given hereunder shall be deemed to have been properly received by a Party as follows:

- i. If personally delivered, at the time of delivery as evidenced by a written acknowledgement of receipt;
- ii. If delivered by e-mail

3. In proving such service, it shall be sufficient to prove that delivery was made to the Party,

#### **Clause 20 - GOVERNING LAW AND DISPUTE RESOLUTION**

1. All questions arising out of or related to the MoU, including but not limited to its validity, interpretation, performance or breach shall be governed by the Laws of Italy.

Any dispute arising out of or in connection with this MoU, including any questions regarding its existence, validity, effect, interpretation, performance or termination, which cannot be resolved amicably within a reasonable time, but not exceeding sixty (60) days, shall be referred to and finally resolved by the Court of Rome.

#### **Clause 21 - THIRD PARTY**

1. Nothing expressed or referred to in this MoU shall be construed to give any person or legal entity, other than the Parties any right, remedy or claim under or with respect to this MoU or any provision of this MoU.
2. This MoU and all of its provisions are for the sole and exclusive benefit of the Parties. No person or legal entity other than the Parties shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this MoU.

#### **Clause 22 - ORDER OF PRIORITY**

This MoU consists of the Recitals from i. to iv., 22 clauses and one Annex 1. The Annex 1 constitutes an integral part of the MoU. In case of inconsistency, the clauses contained in the MoU shall prevail over the Annex 1.

**IN WITNESS WHEREOF**, the Parties have duly executed this MoU as of the date first above written.

#### **SIGNED FOR AND ON BEHALF OF**

##### **ERB**

Name: Filippo Maioli

Designation: Managing Director & General Manager

Signature: \_\_\_\_\_

#### **SIGNED FOR AND ON BEHALF OF**

##### **AICS Mozambique**

Name: Ginevra Letizia

Designation: AICS Representative in Mozambique

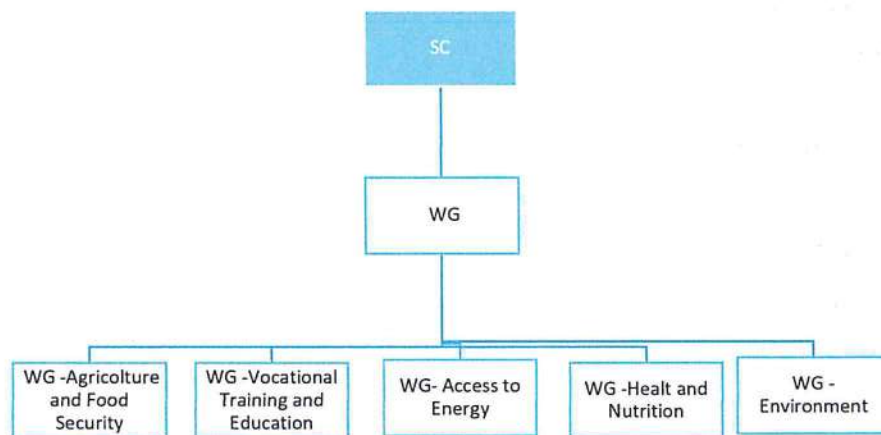
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## ANNEX 1

### Working Groups

#### WG composition and structure:

- [One] Working Group (“WG”), composed by [one] member per each Party, is set up for all the Initiatives to be implemented under the MoU.
- Decisions of the WG shall require the unanimous vote of the Parties’ representatives.
- Each Party is entitled to appoint technical experts, with no right to vote, for the provision of supporting the WG on specific topics, as deemed appropriate from time to time. It is understood that each Party shall bear all costs in relation to the activities rendered by the experts appointed by such Party.
- The below Sub-Working Groups (SWG) may be appointed by the WG representatives:
  - *Agriculture and Food Security:*
  - *Vocational Training and Education:*
  - *Access to Energy WG:*
  - *Health and Nutrition WG:*
  - *Environment;*
- It is understood that the outcomes of the WG’ assessment will be submitted to the SC for its evaluation and decisions, according to the MoU.
- The WG and SWG(s) will meet regularly and as necessary in relation to the projects’ needs.



#### ➤ WG responsibilities:

The WG will have the following responsibilities:

- Preparing and assessing the Initiatives' proposals, in line with SC guidance, for submission of the same to the SC;



- Carrying out any and all studies and analyses as necessary to enable the SC approving the proposals of the Initiatives;
- As to the Initiatives approved by the SC:
  - If deemed useful on a project basis, nominating a specific Project Team (“PT”), with the aim of managing the implementation of the Initiative and supporting the WG in the fulfilment of its duties;
  - Monthly monitoring of activities;
  - Facilitating the solution of any unresolved operational and economic issue relative to the Initiative which may be submitted, at any time, by the PT;
  - Overseeing the implementation of the Initiative, in line with the SC guidance,
  - Validating the key deliverables of an Initiative, identified as such in the relevant Specific Agreement;  
 For the purpose of this document, “validating” means verifying that the key deliverable has been prepared in accordance with the terms and conditions of the Specific Agreement concerned and may be submitted to the SC in order to seek the SC’s approval;
  - Sending the documentation to the SC and supporting the SC for the Initiative’s evaluations;
- Preparing any required report to support the SC’s decisions (including, without limitation, the periodical report relative to the costs of the Initiatives, giving evidence of the suitability of the costs sustained in respect of each activity performed in line with the relevant Party’s internal rules and regulations);
- Attending to the SC meetings where necessary, without the right to vote.

