

Session 5: Best Practices for Legal and Funding Models

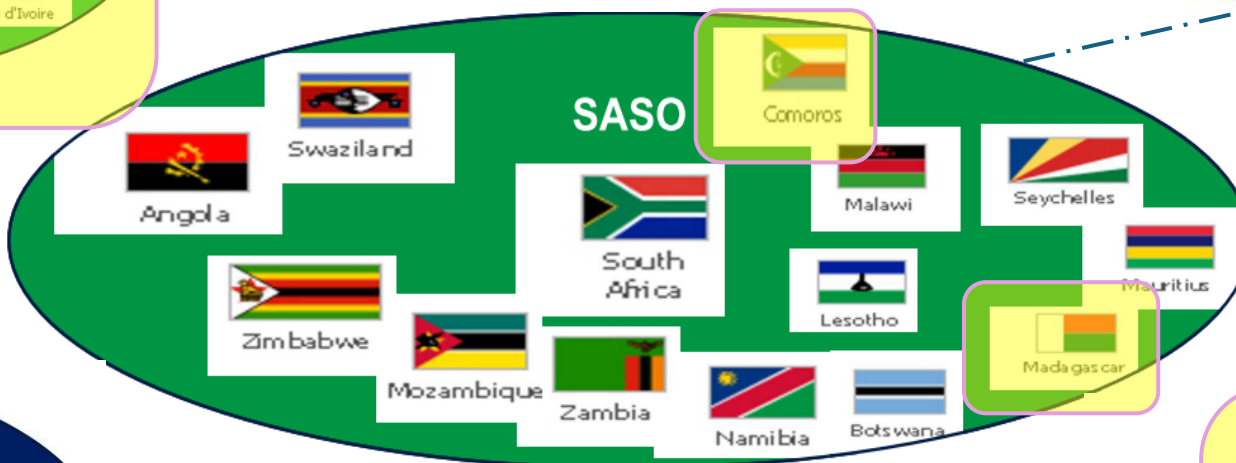
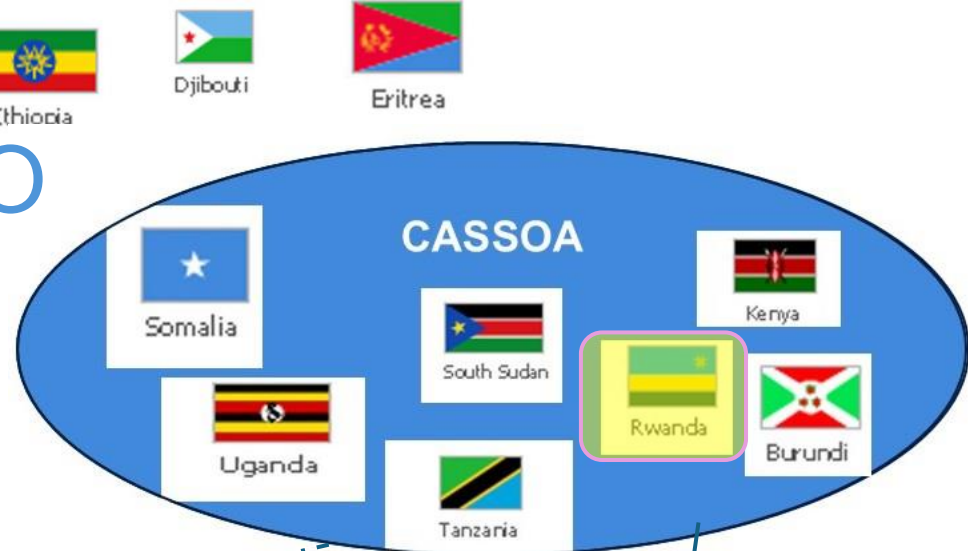
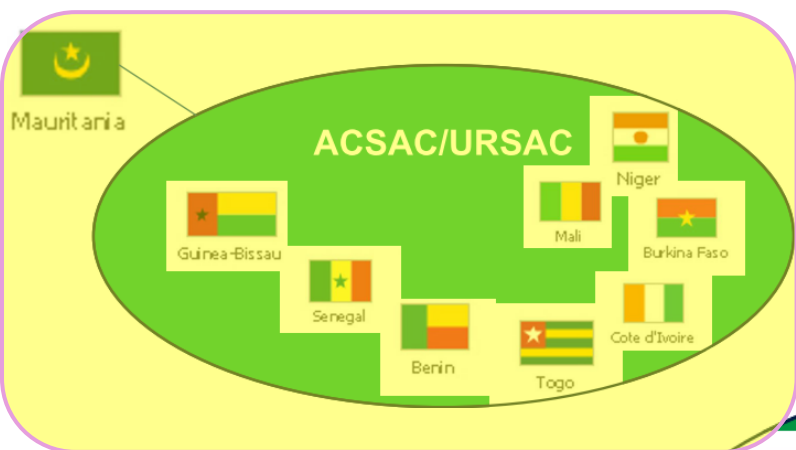
Introduction

Presentation of FRACS study in the AFI region sponsored by EASA as part of EU-ASA project

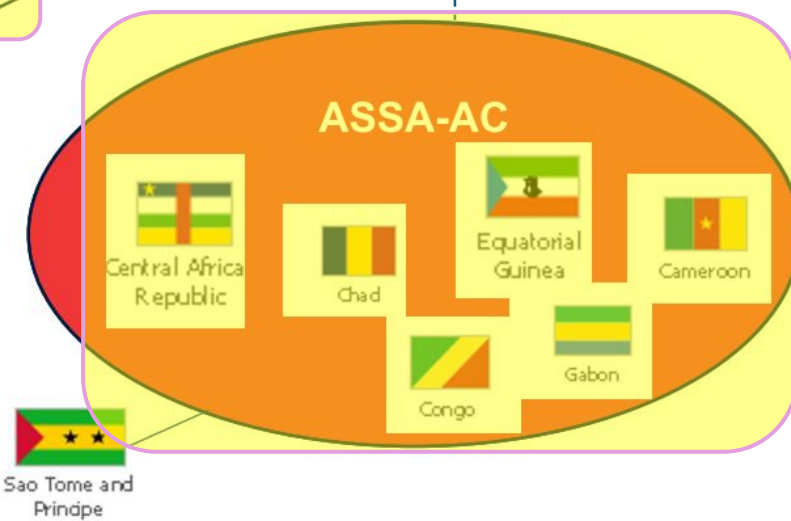
- Analysis of the current situation in the AFI Region
- Propose a roadmap that will enable RSOOs and RAIOS in the AFI Region
 - to ensure a more operational functioning, effective and efficient support to States, and
 - to avoid at the maximum extent, redundancy and duplication of efforts.
- More operational RSOOs is meant to define:
 - Roles and responsibilities,
 - Corresponding adequate Staff and Resources,
 - Legal foundation,
 - Optimised finance and budget mechanisms,
 - Member States and Membership,
 - Sharing of activities and prerogatives with States.
- Progress rapidly on the development of the legal framework for RSOOs in the AFI Region
- Identify various phases of evolution to serve the common objective of establishing an effective aviation safety oversight system in the AFI Region.
- Create added value to States' safety oversight capabilities



Mapping AFI RSOO Membership with AAMAC



DRC



Associate
Proposed
Institutional

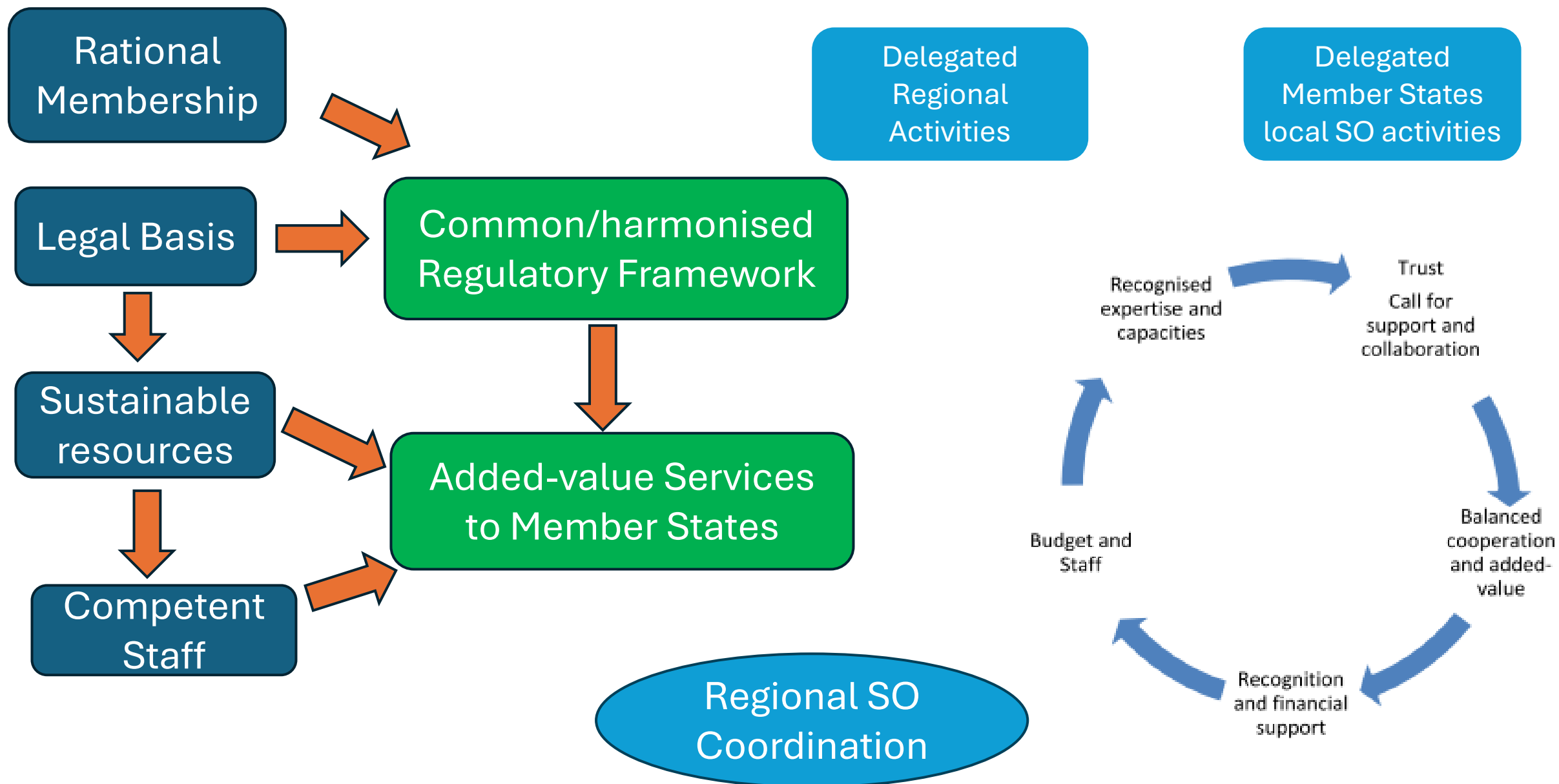
Fundamentals and Objectives of RSOOs and RAIOs

Issues and Challenges

- Role and responsibilities of the RSOO: “Safety Oversight Cooperative Organization” or a “Service Centre”
- Creating strengthening dynamic instead of combining weaknesses
- Resources
 - Technical personnel
 - Budget: even decided contributions don’t necessary materialize in the RSOO budget
- Financial sources
 - Institutional contributions: Member States and REC contributions
 - Charges
 - Service fees
 - Donors
 - Development Banks



Global RSOO operationalisation Scheme



Statement of Facts

RSOO Constituting elements

➤ Nature of Member States

- Small States with less resources
- Big States with resources
- Different working languages
- Different Legal Frameworks
- Members of one or more Regional Economic Communities
- Variable strategic importance of Aviation
- Lack of expertise in some States
- Critical size to exercise Safety Oversight
- Different financial and administrative systems

RSOO Constituting elements (*Cont'd*)

- Combining Strengths
 - Avoid combining Weaknesses
 - Look for complementarity among Member States
- Commonalities
 - Common problems and challenges
 - Work on common solutions
 - Aviation industry
- Proper articulation with Regional Economic Communities
 - Political and institutional approach
 - Regional funding capacities



Member States Dilemma

Member States Dilemma

- Limited Resources
- Critical size to build experience in safety oversight
- Invest on internal capacities of RSOO capacities ?
- Efficiency of CAA/RSOO action depends on the Structure of the State
- Delegation to RSOO does not mean under-commitment of States

RSOO/CAA challenge

- Share responsibilities in a positive and efficient way
 - Clear cooperative scheme in safety oversight
 - Act as partners to improve global level of Safety in the RSOO and State scope
 - Clarify scopes of CAA and RSOO to avoid duplication
 - RSOO to coordinate support to Member States: a one-stop shop for assistance request
- Natural tension on common scarce resources
 - Competent staff
 - Budget
- Offer coordinated and effective support from RSOO level to State level
 - Reinforcing collective capacity in the region to tackle aviation safety challenges and answer adequately to ICAO requirements
- Cooperation based on durable principles and not only circumstances
 - Avoid the « Kleenex » effect
- Review the collaboration on regular basis in a continuous improvement ambition

The natural tension on resources

➤ On competent personnel

- Competent safety oversight personnel are scarce in the AFI region
- CAA or RSOO inspectors may be absorbed by the industry
- CAA inspectors may also move to RSOO
- Enforcing the RSOO should not result in weakening the Member State CAAs

➤ Budget

In case of a limited State budget dedicated to civil aviation, the dilemma for the State is the following:

- Increase the budget of the CAA for its own development
- Contribute to the RSOO

➤ Benefits to Member State resulting from investing in the RSOO development should be highlighted to justify these investments and sharing of resources

What Legal Structure?

Goal of the Legal foundation

- Supports the capacity of the Regional Organisation to exercise its responsibilities for the benefit of its Members
- Hire and Manage Competent staff
- Have and Manage its budget
 - Autonomy of management
 - Managing Incomes and Outcomes
- Have delegation of responsibilities on activities of its scope
- Be Able to valorise its services
- Articulation to Member States national legal Frameworks



➤ Treaty or not treaty?

- All AFI RSOO were established on the basis of an international agreement and all agreements are in force
 - Supplement of Community regulation for ASSA-AC and URSAC/ACSAC
- Challenge of ratification
- MOUs to make it work
- All RSOOs have legal personality



➤ Relation to Regional Economic Community

- Specialized, autonomous or subsidiary institution of REC: URSAC/ACSAC, CASSOA, ASSA-AC, SASO
- Regional Accord Group: BAGASOO
- REC mainly oriented to political and economic synergies or development
- Necessity to clarify Institutional Membership only or Operational Membership

➤ Level of autonomy

- RSOO autonomy is needed to implement Safety Oversight policy
- Necessity of a clear mandate

RSOO Legal foundation (*Cont'd*)

- Common structure of law
- Working language
- Hosting arrangements
- Definition and composition of the RSOO governing bodies
- Consistent scope of activities
- Legal foundation of financial funding
- Delegation of Safety Oversight tasks



➤ RSOO decision-making bodies: due to institutional structure to which it is anchored

- Conference of Heads of State;
- Council of Ministers of the REC
- Committee of Ministers responsible for Civil Aviation;
- RSOO Steering Committee.

=> Risk of ineffectient multi-layer decision-making process

As short as possible !

➤ RSOO governing body

- Governing body defines and/or implement policies, strategies and programs of RSOO
- General case: CAA representatives of Member States
- The executive Director/Secretary of the RSOO participates in the work of the governance body
- Representation of other parties interested in the RSOO?

Should be decisional and efficient !

➤ Executive body and Authority

- Executive Director/Secretary
- Safety related decisions/functions
- Obtaining advice and organising the internal functioning of the RSOO
- Need for more precision in the constitutive instruments or their subsidiary legal instruments in specifying the responsibilities of the executive authority

Should have sufficient autonomy and be performance oriented !



Regulatory framework

- Regulatory structure
- Common or harmonised
 - Direct applicability (WAEMU, CEMAC)
 - Obligation to transpose into internal legal system =>Uncertainty and delays
 - Generic law/regulation to be transformed in national law/regulation
- Challenge to adopt regulation
 - Critical path for adoption by REC Commission and Governing bodies
- Challenge to transpose regulation and adopt national legal acts:
 - Uncertainty and delays, however, transposition is mandatory
 - Model/Generic law/Regulations are not binding on States
 - In practice, it seems that the majority of Member States apply the Model/Generic Law/Regulations even without having transposed them or adopted national legal acts
 - The conclusion is that the RSOO has to set up a system to support and monitor the transposition of the regulations.
- Common approach towards regional aviation industry



Functions and tasks performed on behalf or at request of Member States

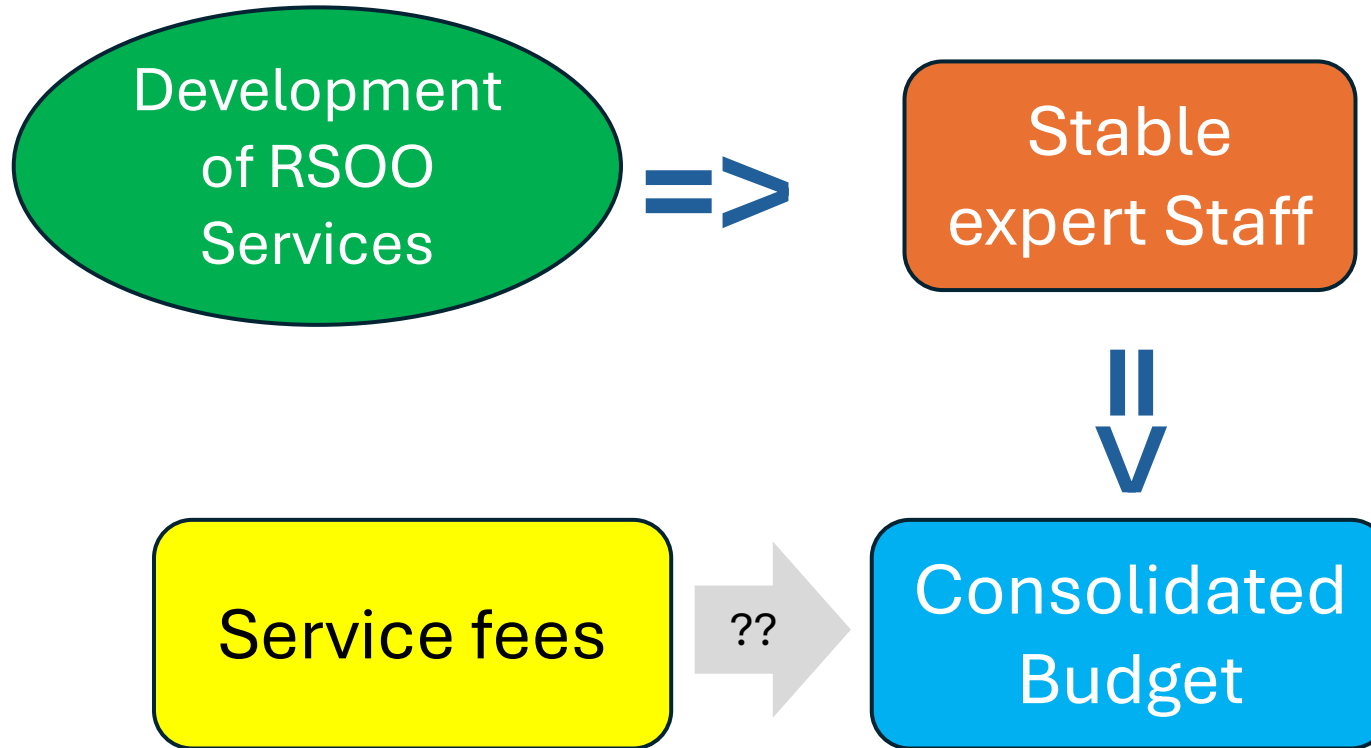
- Under the Chicago Convention, only the State has responsibility for safety oversight, and this responsibility may not be transferred to a regional body,
- Except in one case, the functions of RSOOs are formulated in a general manner
- Because almost all these RSOOs are only governed by an international agreement
- International agreements or their subsidiary legal instruments generally simply stipulate that the RSOO shall perform “certification and surveillance tasks at the request of a Member State”.
- It should be remembered that when an RSOO performs functions and tasks at the request of a Member State, it only becomes responsible for them after the State has made its request and the RSOO has accepted it.

Functions and tasks performed on behalf or at request of Member States *(Cont'd)*

- RSOO should firstly establish guidelines/principles for the acceptance of the performance of certification and surveillance tasks
- Delegation must be concretised through a formal instrument (for delegation levels 1 and 2, this instrument may be a MoU).
- This MoU should be concluded individually with each requesting State.
- To ensure consistency between these bilateral MoUs, each RSOO should establish a framework MoU on the delegation of functions and tasks which would serve as a basis for the development of MoUs with each State.
- Even when the international agreement provides that the RSOO shall carry out, on behalf of the member States/Parties, the technical tasks of certification and surveillance of a service provider, the modalities of these tasks should be specified by the RSOO and its member States/Parties.

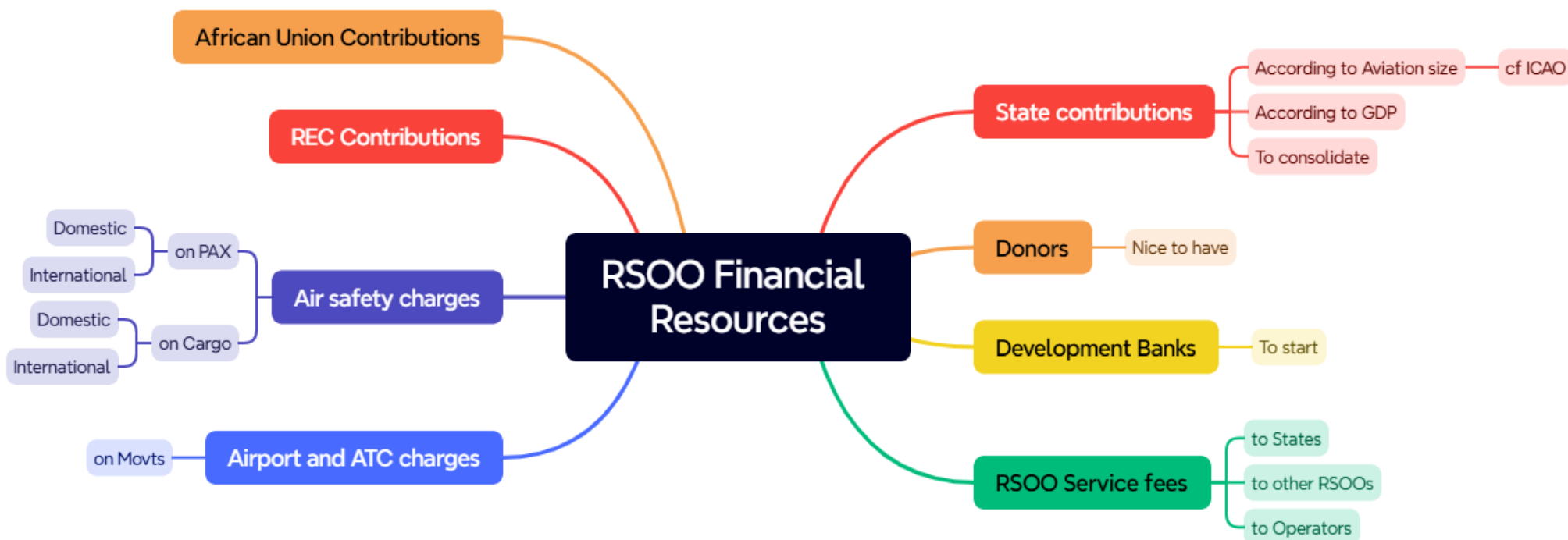
Funding

RSOO resource challenges



- Scarce resources in the region
- Capacity to retain competent staff
- Minimum level of activity to maintain competency
- Tapping in CAA resources is not sustainable, neither for CAA nor for RSOO
- Limited capacity of States to contribute
- Donations is not a sustainable solution
- Volatility of some institutional contributions

Identify different potential financial sources



Collection of Contributions and Charges to secure

- States and Regional Economic Community contribution = Institutional contribution
 - ❖ *According to GDP/capita*
 - Member State contribution: Keep a minimum level
 - REC Contribution
- Air Safety charges
 - ❖ *According to number of PAX*
- Airport and ATC charges
 - ❖ *According to number of movements*
- Service fees
 - Need first to define a catalogue of services
- Security tax
 - ❖ *On PAX*
 - If security is part of the scope of the RSOO

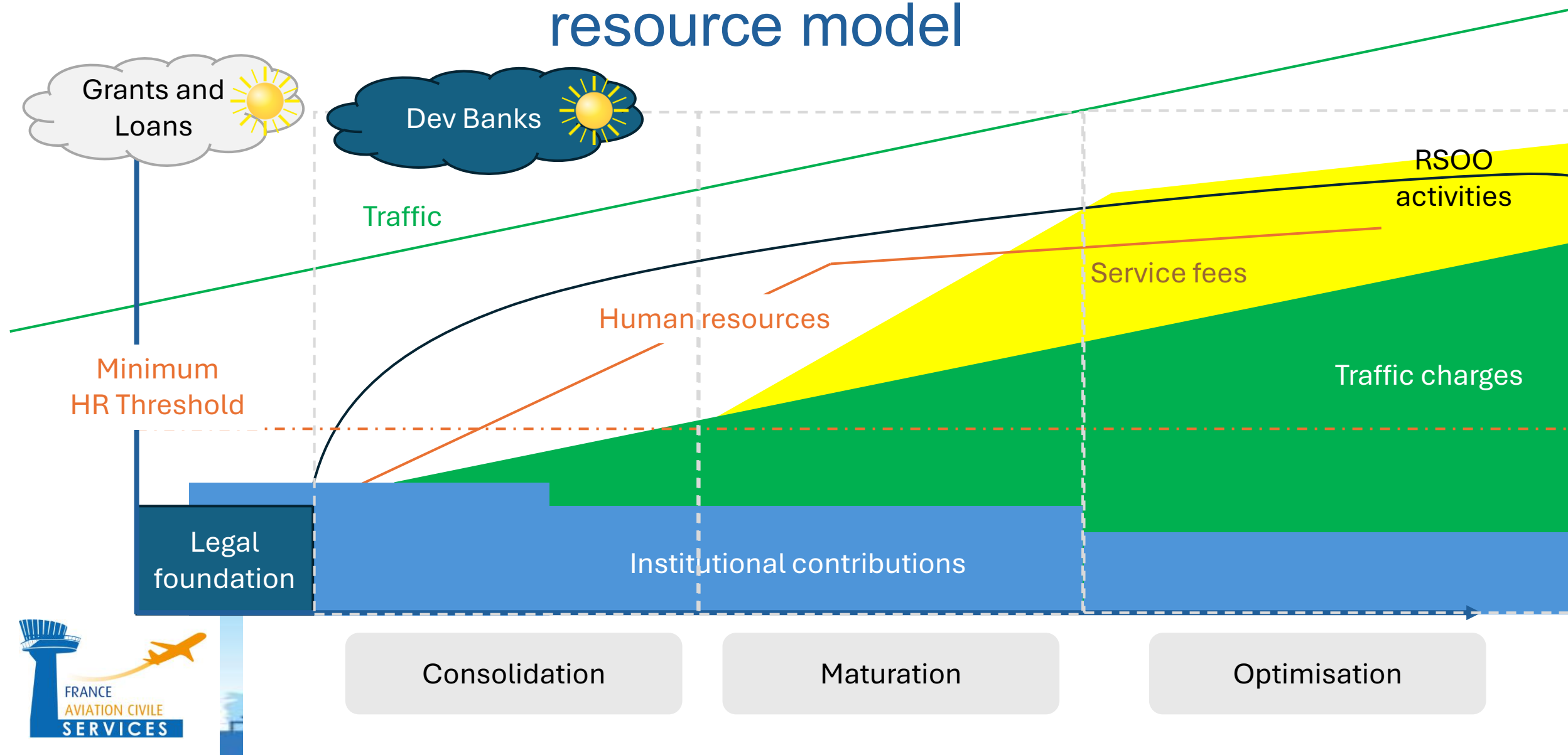
Resources from fees and charges

- ❖ *Strengthen the autonomy of the RSOO*
- ❖ *Are linked to the level of air transport activity and the delegation of tasks from States to the RSOO*
- ❖ *Shift the financial burden or part of the financial burden from States to users and travel costs*

Need for a transparent and trusty collecting system

- Independent from States to avoid cumbersome administrative management,
- With the capacity to gather traffic data,
- Managed at the RSOO sub-regional level,
- With a solid experience in collecting charges to support aviation development,

A possible RSOO financial resource model



A simple Budgetary Model

Different source of expense

- Human resources and Payroll: salaries and associated charges
- Staff training
- Safety tools
- Surveillance activities
- Workshops, Safety promotion and communication
- International coordination (outside subregion)
- Support to States for ICAO duties
- Real estate
- Analytic and prospective studies
- Miscellaneous

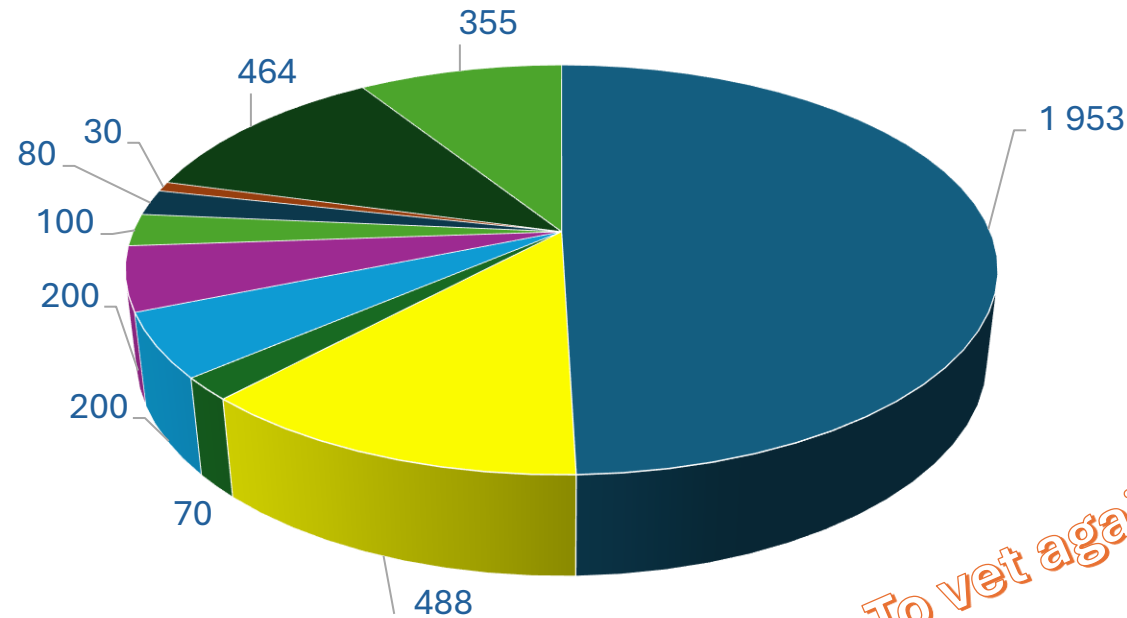
Different funding sources

- Institutional Contribution:
 - State contribution
 - Community Contribution
- Air Safety charges
- Airport and Air Navigation services charges
- RSOO Service fees
 - User fees and charges
 - Revenue from technical support services
- Grants and loans

Basic Budget

Establishing a budget on the basis of a standard organisational chart

Yearly basic RSOO budget (3 940 K\$)



To vet against actual RSOO budgets

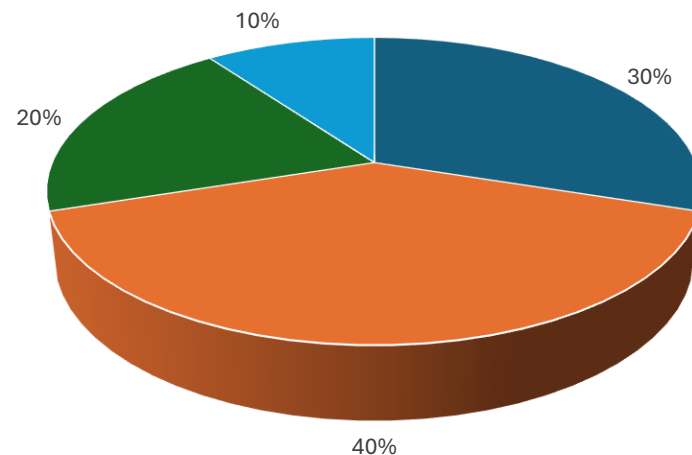
Revenue Simulation

Assumptions for the simulation

To be consolidated

- Institutional Contribution: 100 \$ by unit of GDP/capita
 - Minimum level for Member States:
- Aviation Safety Charge: 0.42 \$ per PAX
- Airport and ATC Charges: 5 \$ per Movt
- Service fees: 10% of the Regional Safety Oversight activity
- AIG Cooperative Network: 0.08 \$ per PAX
- Security Tax: not quoted
- Grants and Loans: not quoted, not sustainable

Minimum RSOO budget income proportions



■ Institutional resources ■ Air Safety Charges ■ Airport and ATC Charges ■ RSOO Service fees

Financial RSOO Income Simulation

Budget resources Simulation Results									
	Institutional Contribution	Air Safety Charges	Airport and ATC Charges	RSOO Service fees		REC Contribution	State Contribution		
Rate	\$ 100.00	\$ 0.42	\$ 5.00	10%		66%	33%		
Unit	GDP/Capita	Pax	Mvts	SO activities	Total	Actual	of Institutional Contribution		Comment
URSAC/ACSAC	\$ 935 521	\$ 3 145 291	\$ -	\$ 155 981	\$ 4 236 793	\$ 1 304 000	\$ 623 680.52	\$ 311 840.26	
ASSA-AC	\$ 2 135 919	\$ 849 862	\$ -	\$ 80 074	\$ 3 065 855		\$ 1 423 945.94	\$ 711 972.97	No actual budget
BAGASOO	\$ 1 167 427	\$ 3 419 114	\$ 417 620	\$ 446 334	\$ 5 450 495	\$ 1 200 000	\$ 778 284.82	\$ 389 142.41	
CASSOA	\$ 655 272	\$ 3 955 851	\$ 22 200	\$ 1 571 980	\$ 6 205 303	\$ 2 479 593	\$ 436 848.09	\$ 218 424.05	Lack of Mvt data
SASO	\$ 5 488 426.51	\$ 7 012 769.82	\$ 165 550.00	\$ 7 812 442.20	\$ 20 479 188.53	\$ 3 789 000	\$ 3 658 951.00	\$ 1 829 475.50	
AAMAC	0	0	\$ 3 070 920.00	0	\$ 3 070 920.00	\$ 2 892 600			

A possible Roadmap for ensuring RSOO Sustainable resources

	Consolidation	Maturation	Optimisation
Sustainable resources	Consolidate Financial resources	Ensure Financial autonomy	Review and revise RSOO Financial system including charging for services
Competent & sufficient Staff	Ensure Minimum level of competent Staff	Increase Staff in relation with RSOO activities	Adapt Staffing

Funding options and mechanism

- All AFI RSOOs have legal personality, they are allowed to provide for their own funding through the collection of fees and charges and to directly negotiate with funding agencies
- RSOOs are currently mainly funded through contributions from their Member/Partner States often supplemented by grants and loans from donors
- Financial sustainability of RSOOs could only be ensured by a gradual shift from a funding mechanism coming from the member/Partner States (and donors) to a funding one based on the combination of several sources
- To support the establishment and implementation of fees, charges, an air safety charge, member States/Parties of an RSOO should put in place strong safeguards in the constitutive agreements, regulations or policies comprising:
 - Facilitating transparency and consultation;
 - Effective and transparent oversight of the charges imposed and related performance management systems (including RSOO's operations efficiency and cost-effectiveness);
 - A consultation mechanism with the Industry
 - Comprehensive and transparent accounting (accounting by category of expense and accounting by activities)
 - Guarantee that revenues from charges are affected to the RSOO's safety oversight functions.

Thank you for your attention

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Identify Issues where RSOO could bring added-value at regional level

➤ Support to ICAO duties

- Audit or ICVM preparation
- Coordinated response to ICAO State letters
- Assistance in OLF, SAAQ completion and EFOD completion
- Coordinated Participation in ICAO working groups
- Global and Regional plans support

➤ Safety or aeronautical studies

- Increasing need to develop safety studies to benefit potential flexibility of the standard framework
- Very often difficult to address in complex situations
- Could be shared among all region

➤ Cooperation with CAAs in practical safety oversight activities

- Joint audits and joint inspection missions
- Tools and methods
- Coordinated approach to Aviation industry

Define Priorities

- Establish a Common or Harmonised Regulatory framework
 - This is the basis of the capacity to cope at a practical level in terms of aviation safety
 - This is necessary to address in common ICAO compliance and develop adequate services
 - This is necessary to develop a training plan adapted to the region going further than general sensitization on ICAO and international standards
 - It should address the specific challenges of the region or the subregion
- Training and Competency management of inspectors
 - Establish a plan to reinforce Safety Oversight capacities regionally for RSOO and CAAs
 - Develop training towards the specific challenges and weaknesses of RSOO Member States
- Regional Safety Oversight coordination
-