

AGREEMENT ESTABLISHING
THE EUROPEAN UNION EMERGENCY TRUST FUND FOR STABILITY AND
ADDRESSING ROOT CAUSES OF IRREGULAR MIGRATION AND DISPLACED
PERSONS IN AFRICA,
AND ITS INTERNAL RULES
hereinafter ‘the Constitutive Agreement’

between

the European Commission, on behalf of the European Union

hereinafter ‘**the Commission**’,

and

the Kingdom of Spain (‘Spain’)

hereinafter referred to individually as ‘**the donor**’ [*and collectively as ‘the donors’*]

WHEREAS:

1. For many years the Sahel region at large (including the Lake Chad Basin) and the Horn of Africa have faced growing challenges of demographic pressure, environmental stress, extreme poverty, internal tensions, institutional weaknesses, weak social and economic infrastructures, and insufficient resilience to food crises, which have in some places spilled over into open conflict, displacement, criminality, radicalisation and violent extremism, as well as forced and irregular migration, trafficking in human beings and the smuggling of migrants. The security challenges have been increasingly linked to terrorist groups and illicit trafficking of all kinds. In a broader regional perspective, the effects of the crises in Libya and Yemen, as well as the internal conflicts in Sudan, South Sudan, Mali and the Boko Haram, Aqmi and Al-Shabaab terrorist threats, have put the whole region in a crisis situation.
2. The various armed conflicts in Africa, as well as social and political upheavals in the EU Neighbourhood region (and beyond), are causing ever increasing forced displacement of people and humanitarian consequences of enormous proportions. The North of Africa serves as transit and, to some extent, final destination for mixed migration movements. In addition, the deteriorated economic environment in the region caused significant decreases in economic activity and local and foreign investment. This has led to a rise in unemployment in particular among young people. Growing inequalities, lack of safety and protection of vulnerable groups, as well as limited rights and opportunities produced a widespread sense of exclusion in particular affecting the youngest generations.
3. For all these countries, the crisis manifests itself in a growing flow of forced migration, including across the Sahara desert, the Mediterranean and other routes towards Europe. The EU has responded by increasing its humanitarian aid and development assistance to

refugees and migrants across Africa. The European Council¹ and the European Agenda on Migration² have also called for a constructive effort to prevent further loss of lives at sea and to reinforce our overall cooperation with the key countries of transit and origin. They further call to pursue these objectives by tackling amongst others the root causes of irregular migration and forced displacement in countries of origin and transit and promoting peaceful and inclusive societies for sustainable development, in particular by strengthening the rule of law, addressing human rights' abuses, improving access to education, creating economic and equal opportunities, including through the promotion of decent work, enhancing legal mobility and building better governance, including on border management, the fight against human trafficking and smuggling, and the effective sustainable return, readmission and reintegration of irregular migrants not qualifying for protection. This requires a firm commitment and comprehensive approach to supporting capacity building of third countries in the field of migration and border management, as well as to the stabilisation and development of these regions of Africa, from the Sahel to the Horn of Africa, and the North of Africa.

4. The Economic Community of West African States' (ECOWAS) Sahel Strategy, the Intergovernmental Authority on Development (IGAD) Peace and Security Strategy, as well as the EU Sahel Strategy³ and the EU Strategic Framework to the Horn of Africa⁴, recognise in particular the importance of a dedicated approach for peripheral areas, which are characterised by very low State presence and porosity of borders, as well as the marginalisation and destitution of particular groups of society and increased vulnerability to irregular migration, extremism, trafficking in human beings and smuggling of migrants. Activities addressing migration should focus on regions and countries of origin and transit of migratory routes and should tackle all its aspects in line with the Global Approach to Migration and Mobility including containing and preventing irregular migration and fight against trafficking of human beings, smuggling of migrants and other related crimes, effective return and readmission, international protection and asylum, legal migration and mobility, enhancing synergies between migration and development.
5. In the EU Sahel Regional Action Plan 2015-2020, adopted by the Foreign Affairs Council on 20 April 2015⁵, (i) border management and fight against illicit trafficking and transnational organised crime, features as one of the key priorities together with (ii) prevention and fight against radicalisation, (iii) creation of appropriate conditions for youth and (iv) migration and mobility. These four domains are considered highly relevant for the stabilisation of the Sahel region. In the Horn of Africa, two key priorities for the countries of the region and the EU are the growing presence of imported and home-grown radicalisation, and the massive levels of displacement over eight (8) million people fuelled by conflict, resource scarcity and political oppression.
6. In the framework of the European Neighbourhood Policy review, migration and mobility is a key area of cooperation for the EU and its partners. Enhancing mobility, especially for education, scientific, cultural, training and professional purposes, has positive effects

¹ EUCO 22/15, 26/06/2015

² COM (2015) 240, 13.5.2015

³ http://eeas.europa.eu/africa/docs/sahel_strategy_en.pdf

⁴ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/126052.pdf

⁵ <http://www.consilium.europa.eu/en/press/press-releases/2015/04/20-council-conclusions-sahel-regional-plan/>

on economies and societies alike. Increasing engagement with the youngest generations, with a particular focus on the protection of vulnerable children and adolescents, can play a major role in promoting their inclusion into their societies and make them both participants and beneficiaries of economic, social and political development.

7. The scale and the seriousness of the stability crisis in the region and the difficulties pertaining to the provision of basic services, the lack of economic perspectives for local population and the weak capacities of national authorities require additional financial commitments and a specific vehicle to provide emergency support specifically tailored to situations of fragility in complement to traditional development instruments.
8. Migration and mobility are a priority in the relation between EU and Africa as the dialogues on migration and mobility, as illustrated by the Rabat and Khartoum Processes, the existing Mobility Partnerships and the Common Agenda on Migration and Mobility.
9. Article 187 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁶ (“the Financial Regulation”) which by virtue of Article 42 of Council Regulation 2015/323⁷ (“the Financial Regulation of the 11th EDF”) also applies to the European Development Fund, authorises the Commission to set up and manage an EU Trust Fund under an agreement concluded with other donors. These funds are designed to mobilise various sources of EU financing and to receive contributions from EU Member States and from donors from non-member countries. EU Trust Funds have been specifically designed for emergency and post-emergency situations where experience has shown that the weakness of the local administrations combined with a sudden increase in the number of donors require a strong coordination of the international community.
10. All the conditions are met for the setting-up a EU Trust Fund for the Sahel, the Lake Chad, the Horn of Africa and the North of Africa (“the Trust Fund”). The Trust Fund will enable the EU, its Member States and the international community to respond collectively to the above mentioned challenges in a shared strategic framework, in concertation with national and regional authorities and through a true division of labour. By themselves, none of the actors currently willing to contribute to the stability of the region would be able to mobilise the human and financial resources necessary to design and implement actions in the whole region.
11. Drawing on the lessons of previous crises and the need to better coordinate reconstruction/development programmes and the building of national and local capacity with the humanitarian response as part of the ‘linking relief, rehabilitation and development’ process (LRRD), the Commission and the High Representative of the Union for Foreign Affairs and Security Policy have proposed setting up the Trust Fund that would act collectively on behalf of the European Union and all the contributors to the fund thanks to strategic and operational coordination.
12. The aim is to develop an innovative European implementation tool that will attract contributions from donors, including those who do not have the capacity to intervene themselves in the region. The Trust Fund will address the disorganisation and fragmentation of the response of the international community and will create a new form

⁶ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union, OJ L 298, 26.10.2012, p. 1.

⁷ Council Regulation (EU) No 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund, OJ L 58, 3.3.2015, p. 17.

of European assistance cooperation that will ensure mutualisation of means and capacities and swift delivery of concrete results on field. The Trust Fund also aims to ensure a greater degree of coordination and a more integrated approach at addressing migration challenges in a comprehensive manner.

13. By a Decision of [xx/xx/2015] the Commission decided to establish the Trust Fund and empowered the Director-General of the Directorate-General for International Cooperation and Development to sign this Constitutive Agreement.
14. The Trust Fund is established under the European Development Fund. Other instruments, in particular the Development Cooperation Instrument⁸ (DCI), the European Neighbourhood Instrument (ENI), the Instrument contributing to Stability and Peace⁹ (IcSP), the European Instrument for Democracy and Human Rights¹⁰ (EIDHR) and Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid (Article 2(d)) may contribute to the Fund, in accordance with the conditions set out therein, and in accordance with the ceilings set by the 2014-2020 multiannual financial framework. A “notional” approach shall be taken in respecting the remit of the contributing financial instruments.
15. The overall objective and purpose of this Trust Fund shall be to address the crises in the regions of the Sahel and the Lake Chad, the Horn of Africa, and the North of Africa. It will support all aspects of stability and contribute to better migration management as well as addressing the root causes of destabilisation, forced displacement and irregular migration, in particular by promoting resilience, economic and equal opportunities, security and development and addressing human rights’ abuses. The Trust Fund shall intervene in coordination with national and regional frameworks, EU instruments, the bilateral cooperation of Member States and the instruments of other development partners. The actions identified in the Trust Fund shall feed into the future and ongoing joint programming actions/documents elaborated jointly by Member States, the Commission, the High Representative of the Union for Foreign Affairs and Security Policy, and the recipient countries.
16. Development cooperation already contributes to a large extent to tackling the root causes of migration and EU current programming, both in the EU Neighbourhood area and in Sub-Saharan Africa, already supports African partners to address a number of the most urgent issues. The European Union Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa comes as an additional tool to help the most fragile and affected countries. The Trust Fund will intervene in subsidiarity and complementarity with EU instruments and/or other donors. It will cover activities where it can have an added-value compared to other EU instruments (or other development partners, including EU Member States), for example by targeting actions in areas that are not under the control of the national authorities and/or by implementing

⁸ Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020

⁹ Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing a instrument contributing to stability and peace. Inclusion of the IcSP short-term component is subject to finding arrangements that would preserve the flexibility and rapidity of action under Article 3 of the IcSP regulation.

¹⁰ Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide

necessary activities that might fall outside of the scope of the signed National and Regional Indicative Programmes and/or by using different implementing methods.

17. The different political and security realities in the three regions, as well as the varying degrees of political dialogue and socio-economic cooperation between the EU and each of those three regional areas, imply nevertheless a differentiated approach to the strategy and the management of the Trust Fund. Therefore, the Trust Fund will include three windows, one for the Sahel and Lake Chad area, one for the Horn of Africa and one for the North of Africa. This differentiation between the three windows will be reflected in the governance of the Trust Fund and at the level of the operational committee.
18. The Trust Fund will achieve its objectives through the pooling of resources and of the capacity to analyse, identify and implement the actions and in particular those of donors active in the regions. The aim is to harness the instruments and know-how of the Commission and the EU Member States so as to develop a solid European response to address the crises in the regions, including the increase of migration flows. To avoid duplicating structures on the ground while making the best use of donors' expertise, delegated cooperation with Member States will be used by the Commission ("the Trustee") where the principles of economy, efficiency and effectiveness can be clearly demonstrated. In close coordination with the European Commission, EU Member States should contribute to the identification of actions that will be presented to all Trust Funds' donors for funding. The expertise and implementation capacity of other donors may also be mobilised.
19. The Trust Fund is open to all EU Member States that wish to contribute to its objectives, and also to other donors.
20. The Trust Fund is established for a limited period, until 31 December 2020 in order to provide a short and medium-term response to the challenges of the regions. Within the framework of the objectives of the Trust Fund set out in Article 2 of the present constitutive agreement, the overall investment strategy of the Fund will be decided by the Trust Fund Board and in close coordination with national and regional authorities. It will be drawn up in coordination with other donors and international bodies operating in the region, especially the existing humanitarian aid set-up. The Trust Fund will in particular work closely with the EU Regional Trust Fund in Response to the Syrian Crisis, "the Madad Fund", in order to coordinate actions and increase synergies regarding the response to the refugee crisis.
21. The rules for the establishment, governance, administration and reporting of the Trust Fund need to be laid down in accordance with Article 42 of the Financial Regulation of the 11th EDF, which refers to Article 187 of the Financial Regulation, and in accordance with the principles of economy, efficiency and effectiveness.
22. Modifying decisions to Commission Decision XXX establishing the Trust Fund Establishment Decision shall be adopted by the College of the European Commission and in accordance with Article 42 of Regulation No 2015/323, which refers to Article 187(8) of Regulation (EU, Euratom) No 966/2012.
23. They also respect the Council Decision 2010/427/EU on establishing the organisation and functioning of the European External Action Service (EEAS), and in particular the provisions of Article 9 regarding the division of competences between Commission services and the EEAS on external action instruments and the programming.

IT IS HEREBY AGREED:

Part I – General Provisions

Article 1

Establishment of the Trust Fund

1.1 A Trust Fund within the meaning of Article 42 of Council Regulation No 2015/323¹¹, “THE EUROPEAN UNION EMERGENCY TRUST FUND FOR STABILITY AND ADDRESSING ROOT CAUSES OF IRREGULAR MIGRATION AND DISPLACED PERSONS IN AFRICA”, (“the Trust Fund”) is hereby established by the Commission, in accordance with its decision of xx October 2015, in agreement with xxx, xxx and xxx, signatory [signatories] to this Constitutive Agreement.

1.2 The Trust Fund shall be managed on behalf of the donors and of the European Union by the Commission (the “Trustee”) in accordance with the provisions of the present constitutive act and under the responsibility of the authorising officer by delegation of the Directorate-General for International Cooperation and Development. The Trust Fund shall not have legal personality.

Article 2

Objectives of the Trust Fund

2.1 The overall objective and purpose of this Trust Fund shall be to address the crises in the regions Sahel and the Lake Chad, the Horn of Africa, and the North of Africa. It will support all aspects of stability and contribute to better migration management as well as addressing the root causes of destabilisation, forced displacement and irregular migration, in particular by promoting resilience, economic and equal opportunities, security and development and addressing human rights abuses.

2.2 The activities proposed to achieve these objectives are set out in Annex I to the Constitutive Agreement. These activities shall concern the following countries:

- (a) for the Sahel Region and Lake Chad area: Burkina Faso, Cameroon, Chad, the Gambia, Mali, Mauritania, Niger, Nigeria and Senegal;
- (b) for the Horn of Africa: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan Tanzania and Uganda.
- (c) for the North of Africa: Algeria, Egypt, Libya, Morocco and Tunisia.
- (d) African neighbours of these countries could also benefit, on a case by case basis, from projects with a regional dimension in order to deal with the regional migration flows and related challenges.

Article 3

¹¹ Council Regulation (EU) No 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund, OJ L 58, 3.3.2015, p. 17.

Resources of the Trust Fund

3.1 General provisions

The Trust Fund's financial resources shall consist of:

- (a) contributions from donors and from the European Union, pursuant to Articles 3.2, 3.3, 3.5 and 3.6 respectively;
- (b) income generated by the activities of the Trust Fund, including remuneration from investments made with funds placed on the Trust Fund's bank account (as defined in Article 8.2.1);
- (c) any unused funds returned to the Trust Fund upon completion of an action financed by it;
- (d) funds recovered by the Manager from any Trust Fund recipient; and
- (e) donations made by individuals or private entities (without public-service mission).

For the purposes of this Constitutive Agreement, the donations referred to in point (e) do not constitute contributions (as defined in point 3.2) and the donating individuals or entities are not regarded as donors.

3.2 Contributions from donors

3.2.1 The donors shall contribute to the Trust Fund (one '**contribution**' per donor) in accordance with the following provisions.

3.2.2 Any contribution by a donor shall be made after signing a '**contribution certificate**' drawn up on the basis of the model in Annex III and sent to the Manager by the donor(s). Each contribution certificate shall contain the following information:

- (a) the amount of the contribution in euros or in any other currency. When it is denominated in a currency other than the euro, the amount will be converted into euros on receipt of the contribution in the Trust Fund's bank account, in accordance with Article 8.3.1;
- (b) the date or dates on which the donor will make the contribution available to the Trust Fund (the '**contribution payment date(s)**'), in accordance with the rules set out in Article 3.3;
- (c) for donors which individually contribute less than the threshold set in Articles 5.5.1 and 6.1.1(c)(i), but which as a group make a contribution higher than these thresholds, the name of the donor and of its duly mandated representative (and alternate), who, on the one part, will be entitled to vote on the Trust Fund Board and, on the other, will represent the group of such donors ('**pool of donors**') and will have voting rights in the Operational Committee, as provided for in Article 6.5.1.
- (d) if so requested by the donor, the window to which they allocate their contribution (or the share between the windows) between the following windows of investment:
 - (i) Window A for the Sahel Region and Lake Chad area (Burkina Faso, Cameroon, Chad, the Gambia, Mali, Mauritania, Niger, Nigeria and Senegal)
 - (ii) Window B for the Horn of Africa (Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tanzania and Uganda)
 - (iii) Window C for the North of Africa (Algeria, Egypt, Libya, Morocco and Tunisia)

3.2.3 For the signature of the Constitutive Agreement, the founding members shall sign a contribution certificate or a similar document specifying the commitment to contribute to the

Trust Fund, including the amount of the contribution and the payment schedule. In the second case, the founding members shall sign the contribution certificate within three months of the signature of the Constitutive Agreement.

3.2.4 By sending a signed contribution certificate to the Manager:

- (a) the donor enters into an irrevocable commitment to make available the contribution described therein on the agreed contribution payment dates; and
- (b) the donor undertakes to comply with the Constitutive Agreement.

3.2.5 Donors may indicate the window(s) to which they allocate their contribution but not place any other conditions for the use of their contribution other than those set out in the Constitutive Agreement.

3.2.6 A donor may at any time decide to make a complementary contribution to the Trust Fund. It should then produce a new contribution certificate, as provided for in Article 3.2.2.

3.2.7 Without prejudice to Article 3.6, the Manager must decide whether a new or additional contribution may be accepted in the year preceding the closure of the Trust Fund, as provided for in Article 17.2.1(d).

3.3 Payment of contributions by donors

3.3.1 The donors shall pay their contribution(s) into the Trust Fund bank account referred to in Article 8.2.1 within three months of the date of signing of the contribution certificate.

3.3.2 However, upon request of the concerned donor, contributions may be paid in no more than five annual instalments. The first instalment must be paid within the time limit laid down in the previous paragraph. The remaining instalments must be paid in accordance with the payment schedule set in the contribution certificate.

3.3.3 By derogation to the second sentence of Article 3.3.2, the three month deadline for payment of the first instalment of the initial contribution of a founding member may be extended until 31 December 2016, upon request of this founding member.

3.4 The Commission's acknowledgment of the receipt of contributions

On receipt of the signed contribution certificate the Commission shall issue an acknowledgement of receipt setting out:

- (a) the details of the contribution, i.e. the amount, the currency and the chosen geographic window(s);
- (b) a table showing the aggregate amount of the agreed contribution and the amounts effectively cashed from each donor;
- (c) the voting rights thus acquired in the Operational Committee pursuant to Article 6.4.1.

In issuing such acknowledgement the Commission undertakes to use the funds in accordance with the provisions of the Constitutive Agreement and, if applicable, with the choice of geographic window(s) made by the donor.

3.5 Contributions of the European Union

The European Union shall contribute to the Trust Fund in accordance with its financial rules and the basic act of the financial instrument used to finance the Trust Fund, including those rules applicable to the EDF. These contributions will be used in respect of the thematic and geographical scope of each instrument and will respect their respective regulation especially

regarding official development assistance (ODA) rules. Articles 3.2 and 3.4 apply *mutatis mutandis* to the European Union's contribution.

3.6 New donors

The Trust Fund is open to contributions from EU Member States or bodies designated by them for that purpose, and, subject to Articles 5.2(e) and 3.1(e), to third countries and other contributors. By contributing to the Trust Fund and signing a contribution certificate, the new donors shall adhere to the Constitutive Agreement, which they undertake to respect.

3.7 Contribution certificates

All signed contribution certificates shall be attached in Annex II.

3.8 Location of the Trust Fund

The Trust Fund shall be managed from Brussels.

Part II – Governance and Management Provisions

Article 4

Governance and management bodies of the Trust Fund

4.1 The following governing bodies are established by this Constitutive Agreement:

- (a) a Trust Fund Board which shall establish and review the strategy of the Trust Fund in accordance with the objectives set in Article 2;
- (b) an Operational Committee, responsible in particular for the selection of actions to be funded by the Trust Fund within the scope of activities detailed in Annex 1.

4.2 The management of the Trust Fund is ensured by the Commission (trustee) which shall act as the secretariat of the Trust Fund Board and of the Operational Committee. It shall be responsible for implementation of the actions financed by the Trust Fund.

Article 5

Trust Fund Board

5.1 Composition of the Trust Fund Board

5.1.1 The Trust Fund Board shall be composed of representatives of the donors, of the Commission acting on behalf of the European Union and, as observers, representatives of EU Member States that are not donors ('**observers**'). Where relevant, representative of concerned countries and their regional organisations may be invited as observers to discuss the strategies of the Trust Fund for each window.

5.1.2 The Director-General of the Directorate-General for International Cooperation and Development, representing the Commission, shall chair the meetings of the Trust Fund Board ('**Chair**'), assisted by the founding members of the Trust Fund ('**Deputy Chairs**'). The Chair will be flanked by a representative of the High Representative of the Union for Foreign Affairs and Security Policy and by the Heads of the EU delegations in the regions. The Manager shall be present at meetings of the Trust Fund Board and shall act as its secretariat.

5.1.3 The Chair may decide to invite representatives of other third parties or experts to talk on specific points on the agenda of the Trust Fund Board. However, a simple majority of Donors may oppose their participation in the meeting.

5.1.4 Each donor shall appoint a duly authorised representative, the ‘full representative’. If the full representative is unable to attend, an alternate may be appointed to take part in the meetings. Any representative, except that of the Commission, may represent more than one donor on the Trust Fund Board, provided that the donors concerned jointly notify the Manager and send a copy of the instrument of authorisation drawn up before the meeting. The representatives may be accompanied by one or more advisory staff.

5.1.5 No representative (or advisory staff) shall receive any form of remuneration from the Trust Fund. They shall bear all costs arising from their function, including all costs incurred for travelling to and attending Trust Fund Board meetings.

5.2 Role and responsibilities of the Trust Fund Board

The Trust Fund Board shall:

- (a) Within the framework of Article 2.1, adopt and review the strategy of the Trust Fund ;
- (b) Within the framework of Article 2.1, adjust the geographical and thematic scope of the Trust Fund activities (including with the creation of a new geographic window)
- (c) issue strategic guidelines addressed to the Operational Committee and the Managers of the Trust Fund;
- (d) take receipt of the annual report and the annual accounts for the Trust Fund drawn up by the Managers and adopted by the Operational Committee and assess the results and impact of the actions financed by the Trust Fund;
- (e) decide whether donors other than EU Member States may contribute to the Trust Fund and lay down the conditions under which such contributions may be accepted;
- (f) decide upon proposed amendments to the Constitutive Agreement, in accordance with Article 19; and
- (g) decide on the winding-up of the Trust Fund, in accordance with Article 17.2.

5.3 Strategy of the Trust Fund

The Trust Fund will be guided by a strategy – underpinned by a clear evidence base – which will determine its objectives and priority sectors. It will be jointly prepared and agreed by the Commission services and the EEAS before being jointly submitted to the Board for approval.

5.4 Meetings of the Trust Fund Board

5.4.1 The Trust Fund Board shall meet as often as necessary and at least once a year. Meetings of the Trust Fund Board may be called by the Chair at any time or at the request of at least one third of the donors.

5.4.2 Meetings of the Board shall usually be held at the premises of the European Union in Brussels. The Chair and Deputy Chairs may, however, propose to the members of the Board that they meet in another location. The Trust Fund Board may hold meetings by videoconference, conference call or any other remote communication system.

5.4.3 If necessary, and in accordance with the Constitutive Agreement, the Trust Fund Board shall adopt rules of procedure. In the event of a conflict between the Constitutive Agreement and the rules of procedure, the Constitutive Agreement shall prevail.

5.5 Voting rights, quorum, voting rules and written procedures

The Board shall operate on the basis of consensus. However, where a vote is required, the following rules will apply:

5.5.1 Each donor or pool of donors having submitted a signed contribution certificate for an amount of not less than EUR 3 million shall have one vote on the Trust Fund Board. The Chair shall have one vote and his/her positive vote shall be required to adopt the decisions taken by the Board in order to ensure that decisions are consistent with the law and principles of the European Union and with the policies as laid down by the European Parliament and the Council of the Union, and satisfy the requirements of the Financial Regulations and the Commission's responsibilities as Manager of the Fund.

5.5.2 The Board shall be quorate if both the following conditions are satisfied:

- (a) the donors present account for at least one third of the donors; and
- (b) the Chair and at least one Deputy Chair are present.

At the start of each meeting of the Board, the Chair shall establish whether the quorum is reached.

5.5.3 In the event of a vote, each decision of the Trust Fund Board shall be taken by a simple majority.

Article 6

Operational Committee

6.1 Composition of the Operational Committee

6.1.1 The Operational Committee is composed of the following members ("**Member(s)**"):

- (a) the Commission's representative, acting on behalf of the European Union, which shall chair the meetings of the Operational Committee (the '**Chair**'). A representative of the High Representative of the Union for Foreign Affairs and Security Policy and the Head of the EU delegations in the eligible countries shall form part of the Commission's delegation;
- (b) representatives of the founding donors signatory to this Constitutive Agreement which has provided a signed contribution certificate for an amount of at least EUR 3 million ('**Deputy Chairs**'); and
- (c) representatives of other donors or pool of donors, which:
 - (i) have provided a signed contribution certificate for an amount of at least EUR 3 million;
 - (ii) adhere to all undertakings contained in the Constitutive Agreement applicable to them, in particular those concerning payment of the contribution;

6.1.2. The following may be invited as observers to the meetings of the Operational Committee ("**Observer(s)**"):

- (a) one representative per non-contributing EU Member States;
- (b) a representative of eligible countries' authorities concerned by the agenda;
- (c) a representative of the regional organisations (Economic Community of West African States (ECOWAS), West African Economic and Monetary Union (UEMOA), Economic

Community of Central African States (ECCAS) and Economic and Monetary Community of Central Africa (CEMAC) and relevant sub regional organisations for Window A; Intergovernmental Authority on Development (IGAD) and East African Community (EAC) for Window B and Union for the Mediterranean and the League of Arab States for Window C) concerned by the agenda.

The Manager shall take part in the meetings of the Operational Committee and shall act as its secretariat.

6.1.3 Each Member shall appoint a duly authorised representative, the ‘full representative’. If the full representative is unable to attend, an alternate may be appointed to take part in meetings. Any representative, except that of the Commission, may represent more than one donor on the Operational Committee, provided that the donors concerned jointly notify the Manager and send a copy of the instrument of authorisation drawn up before the meeting. The representatives may be accompanied by one or more advisory staff.

6.1.4 Representatives shall not receive any form of remuneration from the Trust Fund. They shall bear all costs arising from their function, including all costs incurred for travelling to and attending Operational Committee meetings.

6.2 Sessions of the Operational Committee

The Operational Committee shall organise its work in different sessions corresponding to the different windows of investment, as far as the voting rules of the donors remains the same in all sessions. The Members may appoint a different representative for each of these different sessions.

6.3 Role and responsibilities of the Operational Committee

The Operational Committee shall:

- (a) examine and approve the actions financed by the Fund, which may be grouped in the form of a work programme;
- (b) supervise the implementation of the actions financed by the Trust Fund, taking into account the strategic guidelines issued by the Board, assess the effectiveness of the internal control systems and follow up any observations by internal or external auditors;
- (c) approve the annual report(s) on the activities financed and the annual accounts for transmission to the Trust Fund Board in accordance with Articles 7.2(e) and 8.3.4; and
- (d) ensure appropriate visibility for activities financed by the Trust Fund;

6.4 Meetings of the Operational Committee

6.4.1 The Operational Committee shall meet as often as necessary. Meetings of the Operational Committee may be convened by the Chair at any time or at the request of at least one third of the Members at the date of the request.

6.4.2 Meetings of the Committee shall usually be held at the premises of the European Commission in Brussels. The Chair may, however, propose to the members of the Committee that they meet in another location. The Operational Committee may hold meetings by videoconference, conference call or any other remote communication system.

6.4.3 If necessary, and in accordance with the Constitutive Agreement, the Operational Committee may adopt rules of procedure. In the event of a conflict between the Constitutive Agreement and the rules of procedure, the Constitutive Agreement shall prevail.

6.5 Voting rights, quorum, voting rules and written procedures

The Operational Committee shall operate on the basis of consensus. However, where a vote is required, the following rules shall apply:

6.5.1 Each donor or pool of donors having submitted a signed contribution certificate for an amount of not less than EUR 3 million shall have one vote on Operational Committee. The Chair shall have one vote and his/her positive vote shall be required to adopt the decisions.

6.5.2 The Operational Committee shall be quorate if the following conditions are satisfied:

- (a) the Members present account for at least one fifth of the Members;
- (b) the Chair and at least one Deputy Chair are present.

At the start of each meeting of the Operational Committee, the Chair shall establish whether the quorum is reached.

6.5.3 Without prejudice to Article 19 and in accordance with article 6.5.1, in the event of a vote, each decision of the Operational Committee shall be taken by a simple majority of members present and voting. .

6.5.4 Exceptionally, the Operational Committee may be consulted and take decisions by written procedure with tacit consent on any urgent issue raised at the Chair's initiative. Such decisions shall be deemed approved unless at least one third of the members reject the proposal within five (5) calendar days following receipt of the written request for a decision accompanied by the relevant supporting documents. Rejection of a proposal must be notified in writing to the Chair of the Operational Committee. The Chair shall inform the members of the outcome of the written procedures in writing. All comments by members concerning the written procedures shall be copied to all other members. The Manager shall be responsible for ensuring this provision is adhered to.

6.6 Approval of actions

6.6.1 Actions to be financed by the Trust Fund must receive the prior approval of the Operational Committee.

However, actions below EUR 10 million may be approved by the Manager alone, within the limits of the uncommitted resources available to the Trust Fund. The Manager must inform the Operational Committee immediately of any decision made under this delegated authority.

6.6.2 Each donor may propose actions to the Manager for submission to the Operational Committee, provided that they fall within the remit of the Trust Fund and comply with guidelines laid down by the Board.

6.6.3 The Manager may also, with the agreement of the Operational Committee on the allocation to be mobilised and in accordance with the rules applicable to the implementation of actions, call on expertise in the field to be paid for by the Fund once it is set up in order to identify actions in liaison with the local authorities, international and non-governmental organisations, EU Member States and other donors, and so build a diversified portfolio. This portfolio shall be built up taking into account the actions already implemented by the EU and other donors. In particular, the Manager may call on any qualified person or international civil society. Preference will be given to the expertise of the European Commission, EU Member States and other donors in accordance with the rules laid down in Article 10.

6.6.4 The Manager shall submit one or more proposed actions to the Operational Committee for approval. Each proposed action shall be described in a short document ('**Action Fiche**') containing key information, such as the implementation modalities, schedule, estimated

budget, etc. The Managers shall present these Action Fiches at meetings of the Operational Committee.

For actions where the implementation of tasks is delegated to a third party (the ‘**implementing partner**’), the Action Fiche shall indicate the name of the implementing partner or, if not yet identified, the type of organisation envisaged and the criteria to be used to select them.

6.6.5 Once an individual action has been approved by the Operational Committee, it must be implemented in conformity with the Action Fiche. If, during the implementation phase, a substantial change¹² in the nature of the action is required after its approval by the Operational Committee, the Manager shall present the Action Fiche amended to reflect these changes to the Operational Committee for approval prior to their implementation.

Where an action needs to be changed in exceptional cases of extreme urgency the Manager may amend the Action Fiche and immediately notify the Operational Committee, which shall then have ten working days following the notification to reject the amendment.

Article 7

Management of the Trust Fund

7.1 General

The Trust Fund is managed by the Commission (trustee) under the responsibility of the authorising officer by delegation appointed by the College of the European Commission.

The Commission shall delegate the management tasks to member(s) of its Staff (“**Manager(s)**”) in compliance with its rules of procedure and shall put in place an organisational structure that reflects the various strategies between the different geographic windows. The Commission will decide to appoint a Manager per window; in such cases, each Manager will carry out the tasks laid down in this Agreement for the activities related to the window for which he/she has been appointed.

The accounting officer of the Commission shall be the accounting officer of the Trust Fund (the ‘**Accounting Officer**’).

7.2 Role of the Manager and of the Accounting Officer

The Manager and Accounting Officer of the Trust Fund shall be responsible for the following tasks:

- (a) acting as secretariat for the Trust Fund Board and the Operational Committee, including documentation and logistics;
- (b) carrying out the Trust Fund’s financial management in accordance with Article 8 and providing all the information needed for the establishment of the financial statements;
- (c) implementing actions, directly or indirectly, by delegating implementation tasks to implementing partners, in accordance with Article 10;

¹² Cumulated changes in the funds allocated to a work programme or individual action adopted independently of the work programme not exceeding 20 % of the maximum allocation of the work programme or individual action shall not be considered substantial, provided that they do not significantly affect their nature and objectives of the action. These changes may include an increase in the maximum allocation to the work programme or individual action of up to 20 %.

- (d) preparing by 15 February of each year the Trust Fund's provisional accounts, which shall include;
 - (i) the annual financial statements, drawn up in accordance with Article 8.3.4(b);
 - (ii) the annual financial report on the activities financed by the Trust Fund, drawn up in accordance with Article 8.3.4(a);
- (e) drawing up an annual report on the activities financed by the Trust Fund, their implementation and performance, including the results of controls, and on the efficiency and effectiveness of the internal control system. The report shall be submitted to the Operational Committee for approval by 15 February and then submitted to the Trust Fund Board;
- (f) preparing and submitting the final annual accounts to the Operational Committee for approval by 15 June and then submitting them to the Trust Fund Board, the European Parliament and the Council of the European Union, in accordance with Article 8.3.4(c);
- (g) preparing six-monthly and annual financial reports in accordance with Article 8.3.4(a);
- (h) delivering to each donor copies of the annual report, annual accounts and, as soon as they are available, the financial reports on the activities financed by the Trust Fund;
- (i) drawing up annual or six-monthly disbursement forecasts for the Trust Fund;
- (j) making available to donors, in response to reasonable requests, all relevant financial information. Should a donor request a substantial amount of financial information, the Manager shall be authorised to ask the requesting donor for a contribution to the costs, calculated on an agreed basis;
- (k) deciding on the financing of actions below the threshold established in accordance with Article 6.6.1.

7.3 Management costs

The Commission shall be authorised to deduct a sum of 2.75% of the amounts contributed by the European Union to the Trust Fund and 5% of the amounts contributed by other donors to cover its management costs, in accordance with Article 187(7) of the Financial Regulation, applicable by virtue of Article 42 of the Financial Regulation of the 11th EDF.

The Commission shall present a detailed administrative budget document to the Trust Fund Board every year. This document should set out the budget ceilings for the overall Trust Fund for the year ahead and the proposed indicative allocations for each of the windows. The document should also include indicative budgets for future years and reports on outturns for previous years.

7.4 Liability of the Commission

7.4.1 In its role as Manager or Accounting Officer of the Trust Fund, the Commission shall exercise the same level of care under the Constitutive Agreement as it exercises in the management of the budgets for which management responsibility is conferred on it under the Treaties. It shall assume its managerial and fiduciary responsibility as part of the discharge, in accordance with Article 187(10) of the Financial Regulation, applicable by virtue of Article 42 of the Financial Regulation of the 11th EDF.

7.4.2 The obligations of the Commission in respect of the Trust Fund and the donors shall be limited to those expressly provided for in the Constitutive Agreement.

Part III – Financial and Implementation Provisions

Article 8

Financial management of the Trust Fund

8.1 Financial management of the Trust Fund

8.1.1 The Accounting Officer shall keep accurate and regular financial records of the Trust Fund and the actions it finances in accordance with the relevant provisions of this Article.

The Accounting Officer shall put in place the appropriate banking arrangements ('Trust Fund bank account(s)'), including establishing one account or sub-account per window, and accounting modalities enabling the Manager to identify the earmarking of funds decided by each donor (windows).

8.1.2 The Manager shall carry out any other tasks which are specifically assigned to it in the Constitutive Agreement or reasonably deemed necessary for the efficient and effective financial management of the Trust Fund.

8.1.3 The Manager shall fulfil this role by:

- (a) putting in place effective and efficient internal control systems throughout the life of the Trust Fund;
- (b) making available the resources required to administer the Trust Fund;
- (c) keeping donors informed as part of its management duties;
- (d) ensuring sound financial management, including recoveries where necessary.
- (e) drawing up the annual report on the activities financed by the Trust Fund (Article 7.2(e)) for approval by the Operational Committee.

8.2 Treasury management

8.2.1 The Accounting Officer shall be responsible for treasury management and for management of the Trust Fund's bank accounts. The income from investment of the Trust Fund's liquid assets shall be apportioned twice a year and shall constitute the sole remuneration for any funds on the Trust Fund accounts. This remuneration shall take into account the liquidity and transformation risks borne by the Commission in its investment activity so that it can meet at any time the liquidity requirements for managing the Trust Fund accounts.

8.2.2 All income accruing from the funds deposited on the Trust Fund account shall be an integral part of the Trust Fund.

8.3 Management of the bank accounts, drafting and approval of the financial statements of the Trust Fund

8.3.1 The Accounting Officer shall maintain separate accounts for the Trust Fund in which it will record the receipt of contributions, disbursements for approved actions, all remuneration received, payment of the Manager's management costs, and any other operation affecting the Trust Fund's resources. The Accounting Officer shall manage the Trust Fund account in euros

and in accordance with the accounting principles that it applies in the management of the budgets for which management responsibility is conferred on it under the Treaties. The Accounting Officer shall carry out currency conversion operations following the usual procedures. Contributions shall be taken into account when recorded in the Trust Fund account for the amount in euros resulting from the conversion at the time of their depositing on the Trust Fund account.

8.3.2 The financial year of the Trust Fund shall be the calendar year. The first financial year shall be the year ending on 31 December following the date on which the Trust Fund commences its activities, in accordance with Article 17.1.3, but the obligation of the Accounting Officer to prepare financial statements will only apply in respect of that first financial year if such period exceeds 6 months.

8.3.3 The accounting system shall be designed to organise the budgetary and financial information in such a way that figures can be entered, classified and recorded and that accounting information is accurate, complete and reliable and can be supplied in a timely manner. The accounting system shall consist of general accounts and budgetary accounts.

8.3.4 The financial information shall be prepared as follows:

- (a) The Manager(s) shall draw up by 30 September of each financial year a half-yearly financial report on the Trust Fund's operations, and, by 15 February, an annual financial report.
- (b) The Accounting Officer shall draw up by 15 February the provisional annual financial statements.
- (c) Following preparation and auditing in accordance with Article 11, the Managers and the Accounting Officer shall submit the final annual accounts to the Operational Committee for its approval. These accounts must be approved by 15 June.
- (d) All accounting records and financial statements shall be kept in euros.
- (e) The financial statements shall be drawn up in accordance with EU accounting rules.

Article 9

Eligibility of actions and nationality and origin rules

9.1 Eligible actions

To be financed by the Trust Fund an action must comply with the following criteria:

9.1.1 The action must contribute to the main objectives and purpose of the Trust Fund, as set out in Article 2.1.

9.1.2. The action must concern the countries mentioned in Article 2.2 and their African neighbours in the conditions set out by Article 2.2.

9.2 Nationality and origin rules

The rules of nationality and origin applicable to the EU external action financing instruments as well as those applicable to the EDF contributing to this Trust Fund apply.

Article 10

Implementation of actions financed by the Trust Fund

Once approved by the Operational Committee, an action shall be implemented in accordance with the implementing procedures provided for in the applicable Commission rules and regulations, including those applicable to EDF. Given the Trust Fund's objective in a crisis and post-crisis situation, flexible procedures appropriate to the local environment will be used to ensure that the Fund is effective and responsive. To avoid duplicating structures on the ground while making the best use of donors' expertise and ensuring European Union visibility, delegated cooperation with Member States shall be the preferred option of implementation where the principles of economy, efficiency and effectiveness can be clearly demonstrated. Delegated cooperation with other donors will also be considered.

Part IV – Final Provisions

Article 11

Protection of financial interests, audit and control

11.1 Protection of the financial interests of the Trust Fund

The Commission shall take appropriate measures to ensure that, when actions financed by the Trust Fund are implemented, the financial interests of the Union and of the donors are protected by the application of preventive measures against irregularities, fraud, corruption and any other illegal activities, by effective controls and, if irregularities, fraud, corruption or any other illegal activities are detected, by the recovery of the amounts wrongly paid. The contracts and agreements signed with third parties shall authorise the Commission to carry out controls on the spot, to suspend payments and implementation of actions where serious irregularities, fraud or corruption occur during implementation, and to apply, where appropriate, effective, proportionate and deterrent contractual penalties.

The European Anti-Fraud Office (OLAF) shall exercise the same powers over the Trust Fund in its entirety, including its governance bodies and the representatives of donors and observers participating in such bodies, as it does in respect of other activities of the Commission.

11.2 Audit

11.2.1 The Trust Fund, including the actions financed by it, shall undergo an independent external audit every year. The cost of these external audits shall be borne by the Trust Fund.

11.2.2 The Commission's internal auditor and the Court of Auditors shall exercise the same powers over the Trust Fund as they do over other activities of the Commission.

11.3 Control

11.3.1 The Commission shall set up and ensure the functioning of an effective and efficient internal control system to ensure that internal control objectives are complied with in accordance with Article 32 of the Financial Regulation.

11.3.2 As provided for in Article 17.2, the Commission shall, until at least five years after the termination of the Trust Fund:

(a) keep accounting documents concerning the activities financed by the Trust Fund, and;

- (b) make available to donors, in response to reasonable requests, all relevant financial information. Should a donor request a substantial amount of financial information, the Manager shall be authorised to ask the requesting donor for a contribution to the costs, calculated on an agreed basis.

11.4 Access by European Union institutions and bodies

11.4.1 The Commission, the implementing partners and entities receiving funds from the Trust Fund must give staff and authorised agents of (i) the European Court of Auditors, (ii) OLAF, and (iii) any other relevant European Union institution or body access to all documents and information on the utilisation of Trust Fund resources and allow them to fulfil their obligations under EU law, in full compliance with international law and agreements concluded between the European Union and the implementing partners in this regard.

11.4.2 All agreements and contracts to implement actions financed by the Trust Fund shall expressly authorise the staff and authorised agents of (i) the Commission, including OLAF, (ii) the European Court of Auditors, and (iii) any other relevant EU institution or body to conduct audits, on-the-spot checks and/or inspections.

11.4.3 The Commission shall make available to the European Parliament and the Council of the European Union the annual accounts and annual report, in accordance with Article 7.2.

Article 12

Visibility

12.1 The Commission shall ensure that all entities and implementing partners in receipt of funds from the Trust Fund take all appropriate steps to publicise the fact that an action has received funding from the Trust Fund, in accordance with the ‘Communication and Visibility Manual for EU External Actions’.¹³

12.2 Donors shall agree to the Commission’s publishing in any form and on any platform, including its website, their name and address, the purpose of the contribution and the amount contributed.

12.3 The Commission may use funds from the Trust Fund to ensure the visibility of the Trust Fund-financed actions.

Article 13

Evaluation and monitoring

The Trust Fund and the actions financed by it will be subject to the monitoring and evaluation rules applicable to EU external aid programmes with a view to ensuring adherence to the principles of economy, efficiency and effectiveness, taking account of situations of fragility. Each action proposal must lay down objectives with relevant indicators to measure, monitor and report on results. The results should be included in the European Union Results Framework.

Article 14

¹³ <http://ec.europa.eu/europeaid/work/visibility>

Access to documents and confidentiality

Access to documents of the Trust Fund shall be governed by Regulation (EC) No 1049/2001.¹⁴

Subject to any applicable mandatory rules, the donors and the Commission shall undertake to preserve the confidentiality of any document, information or other material submitted by them or by any third party with a request to treat it as confidential for at least five years after the date of termination of the Trust Fund pursuant to Article 17.

Article 15

Conflicts of interest

The donors and the Commission undertake to take all necessary precautions to avoid conflicts of interest. There is a conflict of interest where the impartial and objective exercise of the functions of any person under the Constitutive Agreement is compromised for reasons involving family, emotional life, political or national affinities, economic interest or any other shared interest with another party.

Article 16

Ownership and use of results

16.1 Without prejudice to the relevant provisions of the contracts and agreements signed by the Manager, or by implementing partners where management is indirect, for the implementation of Trust Fund-financed actions, the ownership, title and industrial and intellectual property rights to the results of the Trust Fund or actions financed by it, and to the reports and other documents relating to it, shall be vested in the Commission.

16.2 Notwithstanding the provisions of Article 16.1, and subject to Article 14, the Operational Committee may accord donors the right to use without charge and as they see fit all documents and other results arising from the Trust Fund and the actions financed by it, whatever their form, provided they do not thereby (i) breach existing industrial and intellectual property rights, or (ii) harm the interests of the Trust Fund or its donors, or those of the European Union.

Article 17

Entry into force and duration of the Trust Fund

17.1 Entry into force and commencement of activities

17.1.1 This Agreement shall enter into force for its signatories on the date of its signing by the representative of the Commission, on behalf of the European Union, and at least one donor.

17.1.2 The Trust Fund shall commence operations when contribution certificates accounting for contributions totalling at least EUR 10 000 000 have been sent to the Manager in accordance with Article 3.

¹⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

17.1.3 The Manager shall inform all donors of the commencement of the Trust Fund's activities.

17.2 Winding-up of the Trust Fund

17.2.1 The Trust Fund shall continue operating until the first of the following situations occurs (each a '**termination event**'):

- (a) there are no funds available on the Trust Fund account or committed funds;
- (b) the Trust Fund Board decides that the Trust Fund should be wound up;
- (c) the European Parliament and/or the Council of the European Union request the winding-up of the Trust Fund in accordance with Article 17.2.2;
- (d) the time limit set for the Trust Fund, which is 31 December 2020, is reached. The duration of the trust Fund may be extended by a decision of the Commission adopted at the request of the Trust Fund Board.

17.2.2 The European Parliament and/or the Council of the European Union may, where appropriate, ask the Commission to cease allocating funds to the Trust Fund or to revise the Constitutive Agreement with a view to winding up the Trust Fund. The Trust Fund Board shall be notified of any such request.

17.3 Destination of resources when the Trust Fund is wound up

If any of the situations provided for in Article 17.2 occur, the following provisions shall apply with respect to the resources of the Trust Fund:

- (a) the Manager may not undertake any new activities other than those necessary for the orderly realisation, conservation and preservation of the Trust Fund's resources and the fulfilment of the contractual obligations in respect of the Trust Fund;
- (b) the Manager shall establish appropriate financial statements, which shall be subject to the audit procedure referred to in Article 11. These audited financial statements shall then be submitted to the Operational Committee for approval;
- (c) the Chair of the Trust Fund Board shall submit the Board's proposal concerning the winding-up of the Trust Fund to the Commission for a decision;
- (d) the Trust Fund Board shall discuss possible uses of the funds available and not yet committed at the time of the winding-up. Any remaining funds shall be returned, on a pro rata basis, to the general budget of the Union, as general revenue, to the EDF; and to the donors.

Article 18

Suspension and cases of force majeure

18.1 The Manager may temporarily suspend implementation of all or part of an action if circumstances so require, in particular in cases of force majeure. The Manager shall inform its Operational Committee without delay and provide all necessary details. The Managers shall endeavour to minimise the duration of the suspension and may resume implementation of the suspended action once the conditions allow, and shall inform the relevant Operational Committee accordingly.

18.2 The implementation period of a suspended action shall be automatically extended by an amount of time equivalent to the length of the suspension. This is without prejudice to any

changes to the suspended action which may be necessary to adapt it to the new implementing conditions.

18.3 None of the parties shall be held liable for failure to fulfil its obligations under the Constitutive Agreement if it is prevented from fulfilling them by force majeure. Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents one of them from fulfilling any of their obligations under the Constitutive Agreement and which is not attributable to error or negligence on their part (or of their partners, contractors, agents or employees), and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as force majeure. Without prejudice to Article 18.2, the party invoking force majeure shall notify the other without delay, stating the nature, likely duration and foreseeable effect, and take any measure to minimise possible damage.

Article 19

Amendments to the Constitutive Agreement

19.1 Amendments to the Constitutive Agreement

Article 2, 5, 6 and 19 may be amended by a unanimous decision of the Trust Fund Board, on a proposal made by any donor

The other provisions of the Constitutive Agreement may be amended at any time by a two-thirds majority decision of the Trust Fund Board on a proposal made by the Managers or any member. In application of Article 5.5.1, the positive vote of the Chair shall be required.

19.2 Annexes II, III and IV

Annexes II, III and IV are attached to the Constitutive Agreement for information purposes and may be amended by the Operational Committee on a proposal of the Manager. By derogation from Article 19.1, the signed contribution certificates (Annex II) may not be amended.

Article 20

Withdrawal of a donor from the Trust Fund

Any donor may decide to withdraw from the Trust Fund by giving one month's written notice to the Chair of the Trust Fund Board. Once withdrawal is effective, it shall cancel any rights and obligations of that donor under the Constitutive Agreement, except those provided for in Article 3. Observers shall inform the Manager of their intention to discontinue their participation.

Article 21

Applicable law and jurisdiction

21.1 The contributions and the Trust Fund shall be governed by the Constitutive Agreement, by the applicable EU legislation and by the general principles common to the laws of the EU Member States.

21.2 The parties shall enter into consultations at the request of one of the parties should any dispute arise concerning the interpretation, application or fulfilment of the Constitutive Agreement, including its existence, validity or termination.

21.3 If these consultations fail to resolve such a dispute amicably to the satisfaction of both parties, any party may refer the matter to the General Court of the European Union.

Article 22

Annexes

The following documents are annexed to the Constitutive Agreement and constitute an integral part thereof:

Annex I: Detailed description of the activities of the Trust Fund

Annex II: Signed Contribution Certificates

Annex III: Model Donor's Contribution Certificate

Annex IV: Model Action Fiche

Done at La Valletta, 2015, in xxx original copies: xx in the German language, xx in the English language, xx in the Italian language, xx in the Spanish language and xx in the French language.

FOR THE EUROPEAN COMMISSION FOR THE

[FOR THE]

Fernando Frutuoso de Melo
Director-General
Directorate-General for International
Cooperation and Development

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