



EU-AFRICA INFRASTRUCTURE TRUST FUND

AGREEMENT CONSTITUTING THE IMPLEMENTATION RULES OF THE TRUST FUND

between

THE EUROPEAN COMMISSION
ON BEHALF OF
THE EUROPEAN COMMUNITY
as Founding Donor

and

THE KINGDOM OF SPAIN
THE ITALIAN REPUBLIC
THE KINGDOM OF THE NETHERLANDS
THE REPUBLIC OF AUSTRIA
THE KINGDOM OF BELGIUM
THE FRENCH REPUBLIC
THE GRAND DUCHY OF LUXEMBOURG
THE HELLENIC REPUBLIC
THE FEDERAL REPUBLIC OF GERMANY

As Donors

and

THE EUROPEAN INVESTMENT BANK
as Manager

also open to

OTHER MEMBER STATES OF THE EUROPEAN UNION
which subsequently accede to this Agreement
as Donors

Brussels, 23 April 2007

THIS AGREEMENT IS MADE ON 23 April 2007 BETWEEN:

The European Community acting through the Commission of the European Communities, represented by Louis MICHEL, Commissioner for Development and Humanitarian Aid,

(the “**Founding Donor**”)

and

THE KINGDOM OF SPAIN
THE ITALIAN REPUBLIC
THE KINGDOM OF THE NETHERLANDS
THE REPUBLIC OF AUSTRIA
THE KINGDOM OF BELGIUM
THE FRENCH REPUBLIC
THE GRAND DUCHY OF LUXEMBOURG
THE HELLENIC REPUBLIC
THE FEDERAL REPUBLIC OF GERMANY

(the “**Donors**”)

and

European Investment Bank, established at 100, boulevard Konrad Adenauer, L-2950 Luxembourg, represented by Philippe Maystadt, President for the European Investment Bank

(the “**Manager**”)

WHEREAS:

1. During 2005, there was an intensification of international donor community efforts in favour of African development and the Millennium Development Goals. In this context, European Union institutions developed a number of policy initiatives for Africa:
 - a. On 13 October 2005, the European Commission adopted the Communication “EU Strategy for Africa: Towards a Euro-African pact to accelerate Africa’s Development” (COM 2005/489), which proposes to “*establish an EU-Africa Partnership for Infrastructure to support and initiate programmes...that facilitate interconnectivity at continental level for the promotion of regional integration*” (Section 3.1); and

- b. On 15-16 December 2005, the European Council, adopted the EU strategy "The EU and Africa: Towards a Strategic Partnership" which includes a statement of support for *"...establishing an EU/Africa Infrastructure partnership, which will be complementary to the new Infrastructure Consortium for Africa..."* (Section 7).
2. In furtherance of these policy initiatives, on 9 February 2006, the European Commission and the European Investment Bank signed a Memorandum of Understanding (the "**MoU**") to promote jointly the EU-Africa Infrastructure Partnership and, in particular, to establish a supporting EU-Africa Infrastructure Trust Fund (the "**Trust Fund**"). It is the intention of the signatories to establish and manage a Trust Fund in line with international practice for such instruments.
3. In accordance with the MoU, the key objective of the Trust Fund is to contribute to achieving the strategic objectives of the EU-Africa Partnership through targeted funding aimed at making up the regional and continental deficit in infrastructure. African Ownership and project sustainability will be the guiding principle of the Trust Fund, and poverty reduction will be key criteria for project selection under the Trust Fund. In achieving the said objectives and with a view to coherence, other EU policies such as the European Neighbourhood Policy, may be given due consideration. The Trust Fund will also act in coherence with other African and multi-stakeholder initiatives.
4. The Trust Fund will contribute to the goals of the EU-Africa Partnership on Infrastructure by providing financial support by way of grants to eligible infrastructure projects alongside long-term loan finance made available by Eligible Financiers. The provision of such grant funds will leverage the provision of long-term loan finance by participating finance institutions. Initial estimates by the European Investment Bank indicate that – for example - the provision of Euro 60 million by way of interest rate subsidies should enable the Project Financiers to make available between Eur 220 and 240 million of loans. (NB Where loans are provided by EIB, they will come as a general rule from EIB own resources and in exceptional cases from Investment Facility resources if they are in line with Article 3 of Annex II of the revised Cotonou Agreement. Some complex infrastructure projects may require a combination of EIB loans on Own Resources and more specialised financial products that can only be provided via the Investment Facility).
5. The overall purpose of the Trust Fund is to contribute to overall development objectives of fight against poverty, sustainable economic growth, social development, protection of the environment, interconnectivity and regional integration. Grant Operations financed by the Trust Fund must contribute to these objectives. The Eligible Financiers (initially European Investment Bank, plus those financial institutions that subsequently join the Agreement) undertake to actively seek and develop a pipeline of eligible projects in order to facilitate a timely commitment of funds.
6. The Founding Donor and the Manager have entered into this Agreement to establish the rules relating to the implementation and administration of the Trust Fund (hereinafter referred to as the "**Rules**").
7. In addition to the Founding Donor's contribution, the Trust Fund may receive financing from EU Member States or Member State Development Finance Agencies who may accede to this Agreement on a voluntary basis and make non-refundable contributions to the Trust Fund as Donors Each Donor accepts thereby that the use of that contribution will be decided by the Trust Fund's management structure in accordance with these Rules.
8. It is accepted that the structure of this Agreement does not prejudice the structure of future Trust Fund Agreements that may be elaborated between the signatories to this Agreement.

IT IS HEREBY AGREED

ARTICLE 1
Eligibility Criteria

1.1 Eligible Projects

African ownership and long-term project sustainability are the guiding principles for this initiative. Projects financed by the Fund will be selected, inter alia, from the updated list of priority infrastructure projects drawn up by the African Union and NEPAD. In order to be eligible to receive financial assistance from the Trust Fund, underlying projects (each, a "**Project**") must comply with the following eligibility criteria:

1.1.1 Geographical coverage:

- (a) The relevant Project must be a trans-border infrastructure project or a national project with a demonstrable regional impact on two or more countries; and
- (b) At least one of the countries concerned must be included in the list of eligible African countries set out in Schedule 1 (as amended from time to time by resolution of the Steering Committee).
- (c) For the avoidance of doubt, infrastructure projects with purely national impact are not eligible.

1.1.2 Eligible Sectors:

The four eligible infrastructure sectors for Projects are:

- (a) Energy;
- (b) Transport (rail, road, air, maritime and inland waterways);
- (c) Water; and
- (d) Information Technology (including telecommunications infrastructure where projects financed provide access to a service of general economic interest).

1.1.3 Capital/Sponsors: Projects may be implemented by public or private entities or entities with mixed public-private capital.

1.2 Scope of the Grant Operations

Trust Fund grant finance will be made available to Projects in support of long-term loan finance and shall take one or more of the following forms (each, a "**Grant Operation**"):

- 1.2.1 Interest rate subsidies:** the provision of a lump-sum amount to a participating lender to enable such lender to make long-term loan finance available at reduced interest rates. Such subsidies will be granted so as to avoid market distortions.
- 1.2.2 Technical assistance:** financing technical assistance including preparatory work for eligible infrastructure projects such as environmental impact assessments, project supervision and targeted capacity building (reinforcing the technical and administrative capacity of local staff in Africa).
- 1.2.3 Direct Grants:** direct grants for project components which have substantial demonstrable social or environmental benefits or to project components which can mitigate negative environmental or social impacts;
- 1.2.4 Insurance premia:** initial-stage funding of insurance premia necessary to ensure the launch of infrastructure projects.

1.3 Project Financiers (PF) - eligibility

Project Financiers are nominated by contributing Donors, in accordance with Article 5, and are eligible to solicit Grant Operations from the Trust Fund in support of Eligible Projects.

ARTICLE 2

Resources of the Trust Fund

2.1 General

The Trust Fund's resources shall consist of:

- (a) Contributions made pursuant to Articles 2.2 and 2.3 (net of the administrative fee payable pursuant to Article 8.4 which includes the costs of the Secretariat referred to in Article 7.1);
- (b) Any income that may be generated by the activities of the Trust Fund;
- (c) Remuneration from investments made with funds on the Trust Fund Account (as defined in Article 8.2); and
- (d) Any unutilised funds returned upon completion of a Grant Operation.

2.2 Contributions

2.2.1 In addition to the Founding Donor, which contributes through the European Development Fund [EDF], any Member State or Development Finance Agency of the European Union may contribute funds (each a "**Contribution**") to the Trust Fund in accordance with the following provisions.

Member States or Development Finance Agencies who make voluntary Contributions, together with the Founding Donor, are hereinafter referred to as the "**Donors**" and individually as a "**Donor**".

2.2.2 Each Contribution shall be made by a Donor pursuant to a contribution certificate (each a "**Contribution Certificate**") substantially in the form of Schedule 2 hereto. Each Contribution Certificate shall be delivered by the relevant Donor to the Manager and shall specify:

- (a) the amount of the Contribution which shall be denominated in Euro and which shall be of no less than €1,000,000 (One million Euros) or such other minimum amount as may be set from time to time by the Executive Committee.
- (b) the date or dates upon which it will make such Contribution available to the Trust Fund (the "**Contribution Payment Dates**"), subject to the payment rules set out in Article 2.3.

2.2.3 A Donor may at any time decide to make additional Contributions to the Trust Fund by delivering a certificate in the form set out in Schedule 3 (an "**Additional Contribution Certificate**").

2.2.4 By delivery of a Contribution Certificate or an Additional Contribution Certificate to the Manager :

- (i) the relevant Donor irrevocably undertakes to make the Contribution described therein available on the relevant Contribution Payment Dates in accordance with Article 2.3 below; and
- (ii) the relevant Donor accepts that these rules shall apply to the Contribution described therein.

2.2.5 Donors may not place restrictions or conditions on the use of any Contribution beyond those set out in these Rules, unless otherwise decided by the Executive Committee and with the agreement of the Manager (see Article 13.2).

2.3 Payment of Contributions

Contributions shall be paid by the Donor in Euro to the Trust Fund Account referred to in Article 8.2.1 as follows:

Pledged contributions of €2.000.000 or less to be paid in one instalment, within 6 months of the date of signature of the Contribution Certificate.

Pledged contributions exceeding €2.000.000 to be paid in one or more instalments of minimum €1.000.000 each. The first instalment shall be paid within 6 months of the date of signature of the Contribution Certificate, and the final instalment within 18 months of the date of signature of the Contribution Certificate.

2.4 The Manager's acknowledgment of Contributions

Following receipt of any signed Contribution Certificate, the Manager shall issue to each Donor a statement including (a) details of such Contribution and (b) a table showing the aggregate Contributions effectively received from each Donor and (c) the voting rights thus acquired in the Executive Committee (see Article 4.5).

ARTICLE 3

Governance of the Trust Fund

3.1 EU-Africa Infrastructure Partnership Steering Committee: The Trust Fund is an instrument of the EU-Africa Infrastructure Partnership, itself a component of the wider EU Strategy for Africa. As such, the strategy of the Trust Fund will be informed and guided by the Steering Committee that is foreseen to provide oversight to the wider EU-Africa Infrastructure Partnership (the "Partnership Steering Committee"). As regards the Trust Fund, this Partnership Steering Committee will be entitled to provide written advice to the Executive Committee, to receive regular summaries of Trust Fund activities and to comment on the Trust Fund Annual Report. However, the Partnership Steering Committee will not intervene in the choice of Grant Operations or the day-to-day running of the Trust Fund, which is the responsibility of the Executive Committee.

3.2 Trust Fund Executive Committee: The Executive Committee is the governing body of the Trust Fund and, in particular, decides on the allocation of funds for individual Grant Operations.

The roles and the functioning of the Executive Committee is further set out in Article 4 below.

ARTICLE 4

Trust Fund Executive Committee

4.1 Composition and role of the Executive Committee

4.1.1 **Membership:** An Executive Committee will be established, comprising three categories of participants:

- Voting Participants (each an "Executive Committee Member")
- Non-voting Participants (each an "Executive Committee Observer")

- The Trust Fund Manager (EIB) and the Trust Fund Secretariat, both of which have non-voting status.

Executive Committee Members will be one representative of each Donor which:

- (i) has provided a signed Contribution certificate for an amount at least equal to the minimum Contribution set out in Article 2.2.2(a) and
- (ii) is current with all undertakings contained in any Contribution Certificate

Executive Committee Observers will be one representative only of each interested European Union Member State that is not a current Contributor to the Trust Fund.

4.1.2 **Representation:** Each Donor shall be represented in the Executive Committee by a named representative (Member). Each such Member:

- (a) May have one named Alternate, who shall represent the relevant Donor in the event the named Member is unable to attend; and
- (b) May be accompanied by no more than two advisory staff; such advisors may include officials or staff from the Project Financier nominated by the Donor.

A named Member may at the same time serve as representative of more than one Donor in the Executive Committee if such Donor shall have notified the Secretariat in advance with a copy of the instrument of authorisation.

Each Executive Committee Observer shall be represented in the Executive Committee by one representative only.

4.1.3 **Remuneration/Costs:** No Executive Committee Member or Observer (or related staff) shall receive any form of remuneration from the Trust Fund and all Executive Committee Members, Observers and related staff shall bear all costs associated with this status including all costs incurred by them in relation to travelling to and attending Executive Committee meetings.

4.2 Role and responsibilities of the Executive Committee

The Executive Committee, acting through the Executive Committee Members, governs the Trust Fund and in particular is the body responsible for:

- (a) examination and approval of Grant Operations in accordance with Article 4.3 below;
- (b) ensuring that the Lead Financiers comply with the terms and conditions set forth in Schedule 5.
- (c) Establishing from time to time a maximum grant amount for each Grant Operation, to ensure that the available resources of the Trust Fund are not absorbed by a very small number of large Grant Operations. Such a maximum grant amount should nevertheless be sufficiently large to accommodate the high cost and long payback periods of most infrastructure projects.
- (d) reviewing the effectiveness of the activities financed with the resources of the Trust Fund taking into account the opinions issued by the Steering Committee;
- (e) Approving the Annual Report, which will include the annual audited financial statements together with a report on the activities for transmission to the Steering Committee, financed with the resources of the Trust Fund;
- (f) ensuring that appropriate visibility is given to the activities financed by the Trust Fund and the Donors;

- (g) in due course, deciding by unanimity on whether additional Donors that are not EU Member States or recognised EU Development Finance Agencies may contribute to the Fund, and the conditions under which such contributions will be accepted.
- (h) approving proposed amendments to these Rules, in accordance with Article 13; and
- (i) Deciding upon the winding-up of the Trust Fund, in accordance with Article 11.2.

4.3 Approval of Grant Operations (as defined in Article 1.2.1).

- 4.3.1 The Executive Committee will approve all Grant Operations in the light of the eligibility criteria contained in Article 1 (above) and in Article 4.3.3 (below).

The decision to extend the underlying project loan remains the responsibility of the Project Financiers; the Executive Committee only takes decisions on the requested grant element.

- 4.3.2 Requests for each Grant Operation shall be supported by a Cover Sheet to be agreed by the Executive Committee, containing key information for each Grant Operation and summarising the underlying project. In addition, relevant information contained in the financing proposal prepared by the Lead Financier in accordance with its 'internal project approval procedures shall be appended to each Cover Sheet.

Approval of Grant Operations can be obtained in two ways:

1 - Following presentation of individual Grant Operation requests at any meeting of the Executive Committee;

2 - Following an annual presentation of a Consolidated List of Grant Operation requests:

(a) In order to accelerate Trust Fund activities and also facilitate treasury management, the Project Financiers' Group shall – once a year - propose to the Executive Committee a consolidated list of Grant Operation requests. This Consolidated List will include projects for which financing proposals have been finalised but may also include projects still under active preparation. The Consolidated List will be supported by a completed Cover Sheet for each Grant Operation request. The Executive Committee will examine and approve each Grant Operation request individually; the provisions of article 4.5.1 as regards conflict of interest will apply on a project per project basis

(b) Once a Grant Operation is approved by the Executive Committee, such Grant Operations will be included on a standing list (the “**Approved Grant Operations List**”).

(c) The Lead Financier of any Project for which a Grant Operation is included on the Approved Grant Operations List may make a call for funds to the Manager without need for any further approval by the Executive Committee provided there has been no material change in respect of any of the information provided in support of the inclusion of the relevant Grant Operation on the Approved Grant Operations List.

If there has been significant material change in the characteristics of the Grant Operation or the underlying Project since either its inclusion in the Approved Grant Operations List or any previous specific approval under this Article 5.3.2, the relevant Grant Operation shall be presented again for approval to the Executive Committee.

Lead Financiers may - at any stage prior to submitting a Grant Operation for approval in accordance with the preceding paragraph - request from the Executive Committee an initial decision on eligibility of the relevant Project and the envisaged Grant Operation (a “**Clearance in Principle**”). Application for a Clearance in Principle shall be based on a concise, written summary of the proposed Project and an outline of the envisaged Grant Operation provided by the relevant Lead Financier in a format to be approved by the Executive Committee on the basis of a proposal by the Manager. This initial decision on eligibility will be taken by the Executive Committee, through tacit written procedure.

4.3.3 Development Criteria for Grant Operation requests:

In addition to the principal eligibility criteria contained in Article 1, the Executive Committee will agree straightforward eligibility criteria as regards development impact and sustainability, including:

- Project contribution to poverty reduction
- Project contribution to economic development and trade
- Economic viability of the project
- Environmental impacts
- Project / infrastructure maintenance (provisions for)

4.4 Meetings of the Executive Committee

4.4.1 **Annual meeting:** The Executive Committee shall meet in person at least once each year in Luxembourg, inter alia to consider the Annual Report and consider the Approved Grant Operations List proposed by the Project Financiers' Group.

4.4.2 **Other Meetings:** In addition to the annual meeting, the Executive Committee shall meet whenever necessary to examine requests for final decisions in respect of proposed Grant Operations. If necessary, meetings may be organised by conference call. Special meetings of the Executive Committee may be called by the Chair at any time or shall be called by the Chair if so agreed by the Executive Committee, or at the request of at least two Donors which account for not less than one third of voting rights at the date of such request.

4.4.3 **Chair:** The Executive Committee Member for the European Commission shall chair the meetings of the Executive Committee during the first 12 months of Trust Fund operations. The Chair will subsequently be rotated amongst Members representing Donors that have made a Contribution Commitment of € 5 million (Five million Euros) or more.

4.4.4 **Location of meetings:** Physical meetings of the Executive Committee shall normally be held at the premises of the European Investment Bank in Luxembourg. On an exceptional basis, and in coordination with the Manager, the Chair may propose to the Executive Committee that a meeting takes place in another location.

Observers: The attendance of Observers is subject to the following rules:

1. Observers may attend all meetings of the Executive Committee.
2. Subject to the agreement of the Chair, observers may actively intervene at meetings, notably to foster constructive information sharing on African infrastructure development amongst Member States.

4.4.5 **Secretariat:** To ensure the fulfilment of its role, the Executive Committee will be assisted by a Secretariat referred to in Article 7. Once established, this Secretariat will organise meetings of the Executive Committee, and prepare and distribute the Agenda and the Minutes.

4.4.6 **Rules of Procedure:** Executive Committee Members may decide on specific rules of procedure in line with these Rules. In the event of a conflict between these Rules and the rules of procedure, these Rules shall prevail.

4.5 Voting Rights, Quorum, Voting Rules and Written Procedure

The Executive Committee will seek to work on the basis of consensus. However, where a vote is required, the following rules will apply:

4.5.1 Voting Rights

Each contribution equivalent to the minimum contribution specified in Article 2.2.2 shall give the relevant Donor one (1) vote in the Executive Committee. These voting rights take effect from the

date of the first Executive Committee meeting following the reception by the Manager of the Donor's Contribution certificate, and are valid for a period of three (3) years, or until the winding up of the Trust Fund if the latter should occur beforehand.

To avoid any conflict of interest, Members of the Project Financiers Group who are also Members of the Executive Committee (see also Article 5) may not participate in Executive Committee voting decisions on a Grant Operation or Operations for which they are the Lead Financier or in which they have a direct participation. In such situations, the voting rights of the said Member are temporarily suspended for the vote in question. Such voting rights remain valid for all other business dealt with by the Executive Committee on that day.

Executive Committee Observers do not have voting rights.

Quorum: The Executive Committee shall be quorate if both the following are satisfied:

- (i) the Donors in attendance, represented by Executive Committee Members, account for at least two thirds of the Donors who have delivered a Contribution Certificate to the Manager at least equal to the minimum Contribution specified in Article 2.2.2; and
- (ii) Donors in attendance represent at least two thirds of the total voting rights at the time of the meeting.
- (iii) The quorum is established at the start of each Executive Committee meeting, and it is not influenced by any temporary suspension of voting rights (per article 4.5.1), which may subsequently intervene during the course of the meeting.

4.5.2 **Voting rules:**

In the event of a vote, each decision of the Executive Committee is subject to a double majority rule and shall be adopted by Members whose voting rights are not suspended as per article 4.5.1 and who represent at least (i) two-thirds of the total amount of valid voting rights and (ii) two-thirds of all voting Donors.

Example: There are 9 voting Donors sharing 120 voting rights:

- If all Donors can vote, then an Executive Committee decision is adopted when 6 Donors representing 80 voting rights vote in favour.

- Now suppose that the votes of 2 Donors, representing 20 votes, are suspended. In this case, an Executive Committee decision is adopted when 5 Donors (at least two-thirds of 7 voting Donors) representing 67 voting rights (at least two-thirds of 100 valid voting rights) vote in favour.

4.5.3 **Tacit written procedure:** As regards:

- (a) Clearance in Principle of a Project; and
- (b) On an exceptional basis, any other urgent business concerning the Trust Fund,

The Executive Committee may be consulted and take decisions in the absence of a meeting, via tacit written procedure. Such decisions shall be deemed approved unless one or more contributing Donor rejects the proposal in within ten (10) calendar days following receipt of the written request for a decision accompanied by relevant supporting documents. Any such rejection shall be by written notice to the chair of the Executive Committee and the Chair shall upon receipt of such a rejection call for a meeting of the Executive Committee to discuss the relevant resolution.

Executive Committee Observers receive copies of the principal documents circulated during Tacit procedures for information, and are notified of the outcome by the Chair.

ARTICLE 5

Project Financiers' Group

5.1 The Project Financiers' Group: The Project Financiers Group is the source of Grant Operation requests that may benefit from Trust Fund support. Accordingly, the following institutions shall be entitled to propose Grant Operations for financing by the Trust Fund:

- (a) The Manager subject to the making of an initial Contribution to the Trust Fund of at least EUR 10 000 000 (ten million Euro) by the Founding Donor; and
- (b) One Development Finance Institution, Bank, Member State Agency or public body with international development project expertise, nominated by each Donor and agreed by the Executive Committee, each a "Project Financier" (PF) subject to:
 - (i) the effective payment of an initial Contribution equal at least to the minimum Contribution specified in Article 2.2.2 by the relevant Donor;
 - (ii) such Donor identifying in the relevant Contribution Certificate the nominated PF; and
 - (iii) the relevant PF by countersigning the Contribution Certificate, undertaking to be bound by the provisions of these Rules and in particular the conditions set out in Schedule 5; and.
- (c) Together the institutions qualifying under paragraphs (a) and (b) above from time to time are referred to as the "**Project Financiers' Group**". The Project Financiers' Group is an informal professional group that will operate according to the principles of transparency and constructive cooperation and will decide on its own operating methodology. The Project Financiers' Group will inform the Executive Committee of this methodology. All members of the Project Financiers' Group will have the opportunity to examine requests for Grant Operations prior to submission to the Executive Committee. Furthermore, all members of the Project Financiers Group that are party to a Grant Operation request, whether Lead Financier or not, may attend and participate in the relevant Executive Committee.

The African Development Bank may be able to join the Project Financiers' Group according to arrangements to be defined in due course.

5.2 Conflicts of interest: The participation of officers or staff members of any member of the Project Financiers' Group (or any affiliate¹ of a member of the Project Financiers Group) as Executive Committee Members could constitute a conflict of interest when the same Project Financier is participating in a Grant Operation presented to the Executive Committee for approval. In this particular case, the provisions laid out in article 4.5.1 apply.

5.3 Submissions to the Executive Committee

Grant Operations proposed for funding shall comply with provisions for eligibility established in Article 1. With reference to Article 4, submission of Grant Operations to the Executive Committee by the Project Financiers Group can take two principal forms:

- 1) individual Grant Operation requests;
- 2) annual presentation of a Consolidated List of Grant Operation requests

In either case, the individual Grant Operation requests will involve one or more members of the Project Financiers Group. Where only one member of the Project Financiers Group is soliciting a Grant Operation, that member is also the "**Lead Financier**" for the Grant Operation. Where more than one member is participating in a Grant Operation request (e.g. a request for an

¹ Affiliate = any person which controls or is controlled by the relevant institution.

interest rate subsidy for a loan that will be co-financed by several members of the Project Financiers Group), the Project Financiers Group will agree amongst themselves on the nomination of one member of the Group to act as the "Lead Financier". Lead Financiers play an important role in the functioning of the Trust Fund, inter alia acting as coordinator and spokesperson vis-à-vis the Executive Committee and the Trust Fund Secretariat. The duties of Lead Financiers are summarised in Schedule 5 of this Agreement.

ARTICLE 6

Disbursement of Funds and terms applicable to each disbursement

6.1 Funding Request

- 6.1.1 Once the relevant Loan Agreement has been signed with a borrower, a Lead Financier may apply for the disbursement of funds from the Trust Fund in respect of a Grant Operation which either (i) has received Final Approval from the Executive Committee or (ii) is for a Project included in the Approved Grant Operations List and the request for financing is made in accordance with Article 5.3.1 by delivering to the Manager a request for disbursement substantially in the form of Schedule 4 (a "**Funding Request**").
- 6.1.2 The first Funding Request shall be submitted no later than fifteen (15) months after the relevant Final Approval or the date of the Approved Grant Operations List.
- 6.1.3 The amount of each Funding Request shall be a lump sum equal to the entire amount of the approved Grant Operation or a part of the approved Grant Operation, depending on the form of financing used. In the latter case, normally where a loan is disbursed in several instalments, the Financiers will submit a Funding Request for each part of the approved Grant Operation.
- 6.1.4 The Manager shall if the Funding Request is compliant with the terms of these Rules transfer within thirty (30) days of receipt the amount requested from the Trust Fund Account to the account of the relevant Lead Financier specified in the Funding Request.

6.2 Applicable terms

The relevant terms and conditions set out in Schedule 5 shall apply to funds disbursed to a Lead Financier and be binding upon such Lead Financier.

ARTICLE 7

Trust Fund Secretariat

7.1 Financing: A portion of the Administrative fee mentioned in Article 8.4 will be used by the Manager to finance a secretariat (the "**Secretariat**"), including the recruitment of adequate staff and the renting of required office space. This Secretariat, reports and is accountable to the Executive Committee for the tasks described in Art. 7.2. The Secretariat is administered by the Manager for the benefit of the Trust Fund. The Manager will decide, after consultation with the Founding Donor, on the appropriate timing for the establishment of the Secretariat.

7.2 Role: The Secretariat will *inter alia*:

- (a) **Consolidated List of Grant Operations:** coordinate, on an annual basis, the preparation by the Project Financiers' Group of a Consolidated List of Grant Operations requests, for submission to the Executive Committee in accordance with Article 5.3..
- (b) **Support to the Executive Committee:** help to ensure effective operations of the Trust Fund, in pursuit of the wider objectives of the Infrastructure Partnership. To this end, the Secretariat will need to develop a regular, effective dialogue with all Donors. In addition, under the guidance of the Executive Committee and/or the Manager, the Secretariat may from time to time be called upon to collaborate with African Partners such as the African Development Bank and NEPAD.
- (c) **Organisation of meetings:** organise all meetings of the Executive Committees, including documentation and logistics;
- (d) **Annual report:** prepare within five (5) months of the end of each financial year in respect of which annual financial statements are prepared by the Manager in accordance with Article 9, an Annual Report on the Trust Fund's activities and submit the same for approval by the Executive Committee and for information and opinion to the Steering Committee of the Partnership incorporating:
 - (i) the annual financial statements prepared and approved in accordance with Article 9;
 - (ii) a narrative and financial description of all Grant Operations financed during the relevant financial year² prepared by the Secretariat in coordination with relevant members of the Project Financiers' Group; and
 - (iii) details of all Contributions received during the year from Donors.
- (e) **Delivery of the Annual report / financial statements:** deliver copies of the Annual report and the 6-monthly unaudited financial statements to each Donor and each Member of the Executive Committee as soon as the same are available;
- (f) **Initial 12 Month Monitoring Report:** The Secretariat shall organise a Progress/Evaluation Report after 12 months of Trust Fund Operations. This Monitoring Report will comment upon the functioning of the Trust Fund over the first year, and make suggestions for improvement where appropriate. As far as possible, this Monitoring Report shall also provide an initial assessment of the Trust Fund operations and the application of the eligibility (Article 1) and Development Criteria (Article 4.3.3).
- (g) **Library:** maintain a library of general policy documents relevant to the Trust Fund's activities, and distribute copies of them to members of the Executive Committee as well as to members of the Project Financiers' Group upon request;
- (h) **Statistical analyses:** Prepare any statistical analyses in respect of Grant Operations financed that may reasonably be requested by Members of the Executive Committee.
- (i) **Press coverage:** Ensure that Eligible Financiers are providing visibility for the Trust Fund and its Donors in their publications, websites, etc. Follow comment on the Trust Fund in the international press, and transmit copies of relevant press articles, internet sites, etc. to members of the Executive Committee.
- (j) **Assistance:** assist the Executive Committee as stated in Articles 4.4.5

7.3 Terms of reference and recruitment: The Founding Donor and the Manager will elaborate the terms of reference for the Secretariat. The Manager will recruit the required person(s) in accordance with his own procedures and in agreement with the Founding Donor. The configuration of the Secretariat can be modified to reflect the size and activity of the Trust Fund.

² This description will include a summary and the context of the Grant Operations and activities carried out during the reported period, difficulties encountered and measures taken to overcome, changes introduced in implementation and achievements and results as well as financial details related to the Operations.

- 7.4 **Location:** The Secretariat will be based in Luxembourg unless otherwise agreed between the Founding Donor and the Manager.

ARTICLE 8

Financial management of the Trust Fund

8.1 Financial Management of the Trust Fund

- 8.1.1 The Manager will be responsible for treasury management and maintaining the financial records and accounts of the Trust Fund and the Grant Operations financed in accordance with the relevant provisions of this Article 8:
- 8.1.2 Furthermore, the Manager shall carry out any other tasks which are either (i) specifically allocated to it by these Rules or (ii) reasonably necessary for the efficient financial management of the Trust Fund (except for functions which fall within the competence or responsibility of the Steering Committee, the Executive Committee, the Project Financier's Group and/or the Secretariat).
- 8.1.3 The Manager shall fulfil this role by:
- (a) making available staff [and other experts] with the skills and experience required to administer the Trust Fund in a prudential manner;
 - (b) communicating, to the extent necessary to fulfil its managerial role, with the Donors;
 - (c) Applying appropriate internal control measures

8.2 Treasury Management

8.2.1 *Separate account:*

The Bank shall open a separate account in its books, called "EU-Africa Infrastructure Trust Fund Account" for recording Contributions received and monies disbursed to the Grant Operations. The Bank shall pay interest on amounts standing to the credit of the EU-Africa Infrastructure Trust Fund Account at an annual rate equal to the monthly average of the Euro Overnight Index Average (EONIA) minus 12,5bp determined as at the end of each calendar month, which will constitute the sole remuneration for any funds on the EU-Africa Infrastructure Trust Fund Account. This rate of remuneration reflects the liquidity level and the notice period for withdrawal (3 days minimum) required for the management of the EU-Africa Infrastructure Trust Fund Account. The remuneration shall accrue on a monthly basis.

8.2.2 ***Investment income:*** All interest accruing on the credit balance of the Trust Fund Account shall be part of the Trust Fund.

8.3 Maintenance of the Trust Fund's Accounts, preparation and approval of the Trust Fund's Financial Statements

8.3.1 *Maintenance of the Trust Fund's accounts :*

The Manager shall maintain a separate account in its books for the Trust Fund in which it will record the receipt of Contributions, the disbursement of the monies to approved Grant Operations, all remuneration received and payment of the Manager's administrative fee and agreed costs of the Secretariat and all other operations affecting Trust Fund resources.

The Manager shall maintain the accounts of the Trust Fund in euro in accordance with the accounting principles that it follows in respect of its own resources. Whenever it shall be necessary for purposes of preparation or presentation of financial statements to determine the

value of any currency in terms of another currency or of the euro, the Manager shall make the valuation following its standard practice

The financial year of the Trust Fund shall be the calendar year.

The first financial year shall be the year ending on the 31st December following the date on which the Trust Fund commences activities but the Manager's obligation to prepare financial statements will only apply in respect of that first financial year if such period exceeds six (6) months.

8.3.2 **Preparation of financial statements:**

- (a) Within 70 days of each 30th June during the term of the Trust Fund, the Manager shall prepare an unaudited, 6-monthly financial statement with respect to the Trust Fund.
- (b) Within 130 days of the end of each 31st December during the term of the Trust Fund, the Manager shall prepare and deliver for approval by the Executive Committee, the Trust Fund's audited annual financial statements.
- (b) All accounting records and financial statements shall be in euro.
- (c) The financial statements shall be prepared in accordance with International Financial Reporting Standards (IFRS) as appropriate.

8.3.3 **Approval of annual financial statements:** Following preparation and, if required, auditing in accordance with Article 9 below, the Trust Fund's annual financial statements shall be submitted

- (a) to the Executive Committee for review and approval; and
- (b) following approval by the Executive Committee, to the Manager's governing bodies according to the provisions laid down in respect of its own financial statements in the Manager's Statute.

8.4 **Administrative Fee**

8.4.1 **Amount:** For the financial management of the Trust Fund, the Manager shall receive a fixed fee equal to 4% (four percent) of the aggregate amount of Contributions effectively made available to the Trust Fund. This fee is intended to cover in full the cost of managing the Trust Fund, including the cost of managing the Trust Fund Secretariat mentioned in Article 7.

8.4.2 The level of the fixed fee is based upon the assumption that additional contributions will be made to the Fund, over and above contributions foreseen in the initial period 2006-2007. Accordingly, the level of the fixed fee will be reviewed during the first half of 2008, also in the light of further Contributions that may be paid into the Trust Fund at that time.

8.4.3 **Payment:** Such fee shall be deducted from the amount of each Contribution received from time to time and credited to a bank account of the Manager.

ARTICLE 9

Evaluation, Audit and control

9.1 Audit

Financial transactions and financial statements with respect to the Trust Fund shall be subject to the internal and external auditing procedures of the Manager.

Should the Manager have recourse to external auditors, the costs of such audit shall be borne by the Trust Fund.

9.2 Control

The Trust Fund shall be managed in accordance with the Manager's usual criteria and procedures, including appropriate internal control measures.

The Manager shall, until at least five years after the termination of the Trust Fund as specified in Article 11.2:

- keep financial accounting documents concerning the activities financed by the Trust Fund and,
- make available to Donors, upon reasonable request, all relevant financial information, including statements of accounts concerning the Grant Operation, whether they are executed by the Lead Financier or by implementing partners. Should a Donor request substantial volumes of financial information, the Manager will be entitled to require a contribution to costs from the requesting Donor, based upon agreed calculations.

9.3 Evaluation

The EU-Africa Infrastructure Trust Fund will benefit from independent mid-Term and final Evaluations. The mid-Term evaluation will normally take place in 2009 or 2010; the exact timing will be decided by the Executive Committee. These independent evaluations will be organised by the Executive Committee and will be financed by the Trust Fund resources.

The Evaluation reports will summarise the impact of Grant Operations financed by the Trust Fund in the African countries, paying attention to human resources, the eligibility (Art 1) and development (Art 4.3.3) criteria. A copy of each such report shall be delivered to each Donor forthwith upon completion.

9.4 Access by European Community Institutions

The Manager and each Lead Financier shall ensure that the European Court of Auditors, OLAF and any other competent European Community body has access to such documents and information in relation to the utilisation of Trust Fund resources as is necessary to enable such bodies to perform their obligations under European Community law.

ARTICLE 10

Visibility

Every Lead Financier shall take all appropriate measures to publicise the fact that a Grant Operation has received funding from the EU-African Infrastructure Trust Fund including inclusion of appropriate clauses in the relevant financial documentation. Lead Financiers accept to provide the Trust Fund Secretariat with information on such publicity from time to time.

ARTICLE 11

Entry into force and duration of the Trust Fund

11.1 Entry into force and commencement of activities

11.1.1 ***Effectiveness of this Agreement:*** The present Rules shall enter into force at the date of their signature by the Manager, the Founding Donor and the Donors.

- 11.1.2 **Commencement of activities:** The Trust Fund shall commence its activities when Contribution Certificates representing Contributions for a in a total amount of at least EUR 20 million have been delivered by Donors in accordance with Article 2.2.
- 11.1.3 **Notice to Donors:** The Manager shall inform all Donors of the commencement of the Trust Fund's activities and shall call the inaugural meeting of the Executive Committee.
- 11.1.4 **Inaugural Partnership Steering Committee meeting:** The inaugural meeting of the Partnership Steering Committee is expected take place within five months following the first meeting of the Executive Committee.

11.2 Winding-up of the Fund

- 11.2.1 **Termination Events :** The Trust Fund shall continue until the earlier of the following (each a "Termination Event"):
- (a) there are no longer any undisbursed funds, committed Contributions or ongoing Grant Operations;
 - (b) the Executive Committee determines that the Trust fund should be wound up;
 - (c) The Manager advises the Executive Committee in writing that (i) no Contribution has been received by the Trust Fund from any Donor over a continuous period of 30 calendar months and (ii) that the remaining, unutilised balance available in the Trust Fund is less than 15% of the total amount available immediately following the last Contribution.
 - (d) 31st December 2013 or such later date agreed upon between the Donors and the Manager.

11.3 Disposal of Resources on winding-up the Trust Fund

Upon the occurrence of a Termination Event, the following provisions shall apply with respect to the resources of the Trust Fund:

- (a) The Manager shall forthwith cease all activities relating to such resources, except those incidentals to the orderly realisation, conservation and preservation of such resources and the settlement of the direct or contingent obligations to which they may be subject.
- (b) The Manager shall establish appropriate financial statements, which shall be subject to the audit procedure referred to in Article 9 above. These audited financial statements shall then be submitted to the Executive Committee for approval.
- (c) The Project Financiers' Group shall discuss with Donors the possible uses of the funds available and not yet disbursed at the time of winding-up, with a view to integrate such funds into their lending activities in favour of infrastructure projects in sub-Saharan Africa.

ARTICLE 12

Nature of the Trust Fund and Liability of the Manager

12.1 The Trust Fund

The Trust Fund is not a separate legal entity but a fund of monies managed by the Manager on behalf of the Donors in accordance with the terms of this Agreement.

12.2 Liability of the Manager

12.2.1 **Duty of care:** The Manager shall exercise the same level of care in the discharge of its functions hereunder as it exercises in the management of its own affairs.

12.2.2 **No other obligations:** The Manager shall have no obligations in respect of the Trust Fund or the Donors save as expressly stated herein.

ARTICLE 13

Amendments

13.1 Initial review

These Implementing Rules shall be re-examined by Executive Committee in conjunction with the review of the Trust Fund mandate that will take place after twelve months of Trust Fund activities.

On the occasion of this review, the Executive Committee shall, in agreement with the Manager, take a decision as to the continuation of the Trust Fund and the terms and conditions thereof. Failing any decision in this respect, no **further** Contributions shall be made. The failure to reach such a decision does not in itself constitute a Termination Event.

13.2 Executive Committee decision

These Rules may also be amended at any time by unanimous decision of the Executive Committee in agreement with the Manager upon a proposal made by the Founding Donor, the Manager or any Donor acceding to this Agreement.

ARTICLE 14

Confidentiality

The Donors, the Manager and each Lead Financier undertake to preserve the confidentiality of any document, information or other material directly related to the Trust Fund or a Grant Operation or Project.

ARTICLE 15

Settlement of disputes

15.1 Amicable resolution

The affected parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or fulfilment of the MoU, these Rules or any Contribution Certificate, including their existence and validity.

15.2 European Court of Justice


In default of amicable settlement, the affected parties hereby submit to the exclusive jurisdiction of the Court of Justice of the European Communities.

15.3 Applicable law

These Rules are governed by French law.

Signed in Brussels on 23 April 2007, in eleven (11) originals in English and Dutch, French, German, Greek, Italian and Spanish, all texts being equally authentic.

For the European Commission



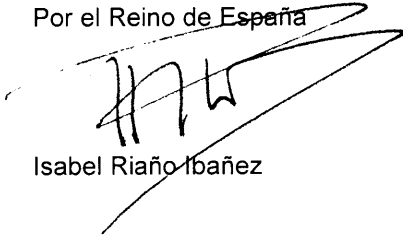
Commissioner Louis Michel

For the European Investment Bank



President Philippe Maystadt

Por el Reino de España



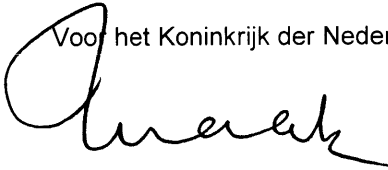
Isabel Riaño Ibañez

Per la Repubblica Italiana



Gian Luca Bertinotto

Voor het Koninkrijk der Nederlanden



Jurriaan Kraak

Für die Republik Österreich



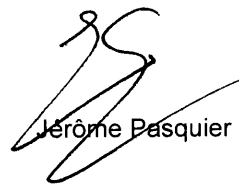
Simone Knapp

Pour le Royaume de la Belgique
Voor het Koninkrijk België
Für den Belgische Königreich



Minister Armand De Decker

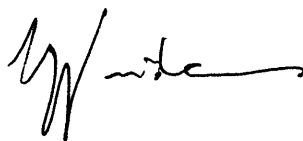
Pour la République française



Jérôme Pasquier

Pour le Grand Duché du Luxembourg

Georges Friden

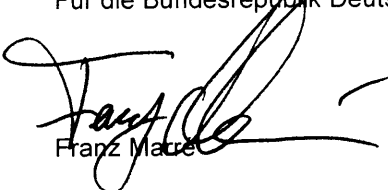


Για την Ελληνική Δημοκρατία



Αλέξανδρος Μητρογιώργος

Für die Bundesrepublik Deutschland



Franz Matre

Annexes:

Schedule 1: List of eligible African countries in which Eligible Projects can take place

Schedule 2: Form of Contribution Certificate

Schedule 3: Form of additional Contribution Certificate

Schedule 4: Disbursement request

Schedule 5: Applicable terms and conditions to Lead Financiers

Schedule 1 - List of eligible African countries

Eligible African countries ³
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Central African Republic
Chad
Congo Brazzaville
Democratic Republic of Congo
Eritrea
Ethiopia
Djibouti
Gabon
Equatorial Guinea
Sao Tome & Principe
Ghana
Togo
Guinea-Bissau
Guinea Republic
Ivory Coast
Liberia
Kenya
Somalia
Lesotho
Swaziland
Madagascar
Malawi
Mali
Mauritania
Mauritius
Comores
Seychelles
Mozambique
Namibia
Niger
Nigeria
Rwanda
Senegal
Cape Verde
Gambia
Sierra Leone
Sudan
Tanzania
Uganda
Zambia
Zimbabwe

³ Reminder: Infrastructure projects with purely national impact are not eligible.

Schedule 2

Form of Contribution Certificate

FORM OF CONTRIBUTION CERTIFICATE

From: [DONOR]

To: European Investment Bank as Manager of the African Infrastructure Trust Fund (the "Manager")

Date: []

Dear Sirs

Contribution to the African Infrastructure Trust Fund (the "Trust Fund")

We refer to the Trust Fund and the Agreement Constituting the Implementation Rules of the Trust Fund dated 23 April 2007 (the "Rules").

All capitalized terms used in this certificate shall unless otherwise defined have the meaning given to them in the Rules.

Article 1 Amount of the Contribution

We hereby confirm our intention to make a Contribution to the Trust Fund in an amount of EUR [] ([] euros).

Article 2 Payment

We shall make the Contribution available to the Manager in immediately available funds **EITHER** [in one instalment to be paid no later than []] **OR** [in accordance with the following schedule [*specify dates and percentage of the total Contribution to be paid on each date*]]

All payments in respect of the Contribution shall be made in accordance with Article 2.3 of the Rules.

Article 3 Donor's Confirmation

The Rules shall apply to the Contribution and the Manager shall administer the Contribution in accordance with the Rules.

Article 4 Eligible Finance Institution

In accordance with Article 5.1, we hereby identify the following institution as being eligible to act as Lead Financier in accordance with the Rules:

[]

Should the Donor decide to change the Eligible Financier, it shall notify the Executive Committee and the Manager; a rider to the current document will reflect such change.

By countersigning this Certificate, [] acknowledges that it has received a copy of the Rules and the Finance Conditions referred to therein and that it will be bound by the terms thereof in all respects.

Article 5 Communications

Any notices or communications addressed to the Donor in connection with the Trust Fund shall be addressed to :

For the Donor

Address:
Attention
Tel:
Fax:
E-mail:

For [Lead Financier]

Address
Attention
Tel:
Fax:
E-mail:

[DONOR]

By: _____
(Name and title of Authorized Representative)

Date: _____

[LEAD FINANCIER]

By: _____
(Name and title of Authorized Representative)

Date: _____

Schedule 3
Form of Additional Contribution Certificate

From: [DONOR]

To: European Investment Bank as Manager of the African Infrastructure Trust Fund (the "Manager")

Dear Sirs

Additional Contribution to the African Infrastructure Trust Fund (the "Trust Fund")

We refer to the Trust Fund and the Agreement Constituting the Implementation Rules of the Trust Fund dated 23 April 2007 (the "**Rules**").

All capitalized terms used in this certificate shall unless otherwise defined have the meaning given to them in the Rules.

Article 1 Amount of the Contribution

We hereby confirm our intention to make an additional Contribution to the Trust Fund in an amount of EUR [] ([] euros).

Article 2 Payment

We shall make the Contribution available to the Bank in immediately available funds **EITHER** [in one instalment to be paid no later than []] OR [in accordance with the following schedule [*specify dates and percentage of the total Contribution to be paid on each date*]]

All payments in respect of the Contribution shall be made in accordance with Article 2.3 of the Rules.

Article 3 Donor's Confirmation

The Rules shall apply to the Contribution and the Manager shall administer the Contribution in accordance with the Rules.

Article 4 Communications

Any notices or communications addressed to the Donor in connection with the Trust Fund shall be addressed to :

For the Donor

Address: []
Attention []
Tel: []
Fax: []:
E-mail: []

[DONOR]

By: _____
(Name and title of Authorized Representative)

Date: _____

**Schedule 4
Funding Request**

From: Lead Financier

To: European Investment Bank as Manager of the African Infrastructure Trust Fund (the "Manager")

Dear Sirs

**The African Infrastructure Trust Fund (the "Trust Fund")
[Description of Grant Operation] (the "Grant Operation")**

We refer to the Trust Fund and the Agreement Constituting the Implementation Rules of the Trust Fund dated 23 April 2007 (the "**Rules**").

All capitalized terms used in this certificate shall unless otherwise defined have the meaning given to them in the Rules.

We further refer to the Grant Operation which [is included in the Approved Grant Operations List] [was approved by the Executive Committee on []].

We confirm that a Loan Agreement has been signed with (borrower.....) on (date.....) and attach a copy of relevant page(s) of the Loan Agreement containing the required signatures and also information about the Loan disbursement schedule.

In conformity with the attached information about scheduled Loan disbursement we now request a (first/second...) disbursement from the Trust Fund in an amount of EUR [] ([] euro) in respect of the Grant Operation.

The disbursement should be made to the following account no later than [date falling no earlier than [] business days in Luxembourg after the date of the disbursement request]

By signing this Disbursement Request, [] acknowledges that it has received a copy of the Rules and the Finance Conditions referred to therein and that it will be bound by the terms thereof in all respects. We confirm that the Rules will apply to any disbursement made pursuant to this disbursement request including the provisions regarding the repayment of unused Trust Fund moneys.

Yours faithfully

By: _____
(Name and title of Authorized Representative)

Date: _____

Schedule 5

Terms and conditions applicable to Lead Financiers

1. GENERAL OBLIGATIONS

- 1.1. The Lead Financier will make best efforts to apply efficient, timely and rigorous internal project approval procedures.
- 1.2. The Lead Financier shall ensure that each Grant Operation is carried out in accordance with the relevant Executive Committee approval and the Implementation Rules.
- 1.3. The Lead Financier shall implement each Grant Operation with the requisite degree of care, efficiency, transparency and diligence.
- 1.4. The Lead Financier will make all reasonable efforts to ensure that the conditions imposed upon it under Articles [procurement, fraud and corruption, visibility] below are also applied by the borrower and the promoters of the relevant Project.
- 1.5. The Lead Financier shall take all reasonable measures to prevent irregularities, double funding, fraud, corruption or any other illegal activity in the management of each Operation and the contracts that are directly financed by the Trust Fund.

All suspected and actual cases of irregularity, double funding, fraud and corruption as well as measures related thereto taken by the Lead Financier must be reported to the Manager without delay. At the request of the Manager, the Lead Financier shall take such reasonable actions as are within its power in respect of such fraud and corruption to recover funds unduly paid.

2. INFORMATION

- 2.1 Each Lead Financier shall provide the Trust Fund Secretariat with all information on Grant Operations, including disclosure statement, necessary to produce the Annual Report of the Trust Fund as well as the Evaluation Reports of the Trust Fund that may be prepared from time to time.
- 2.2. The Manager and the Executive Committee may decide to request additional information at any time in relation to a Grant Operation, providing the reasons for the request. Depending upon the nature of the information requested, such information shall normally be supplied within 30 days of the request.
- 2.3 Annual reports shall be presented in French or English.
- 2.4 In addition to the above mentioned reports, the Lead Financier will ensure that all publications, press releases and updates, relevant to a Grant Operation are communicated to the Executive Committee as and when they are issued.
- 2.5 In any event the Lead Financier shall inform the Manager without delay of any circumstances likely to hamper or delay the implementation of each Grant Operation. The Manager will then inform the Executive Committee in due course.

3. LIABILITY

- 3.1. The Lead Financier shall have sole responsibility for complying with any legal obligation incumbent on it.
- 3.2. No other party to the Trust Fund shall incur any liability whatsoever for loss, liability, damages or injury sustained by the Lead Financier or any of its staff.
- 3.3. The Lead Financier shall discharge the Donors, the members of the Executive Committee and any other party to the Trust Fund of all liability associated with any claim or action relating to the implementation of any Grant Operation.

4. CONFLICT OF INTERESTS

The Lead Financier undertakes to take all necessary precautions to avoid conflicts of interests and shall inform the Executive Committee without delay of any situation constituting or likely to lead to any such conflict. Upon being thus informed of any potential or actual conflicts of interest, the Executive Committee shall provide advice to the Lead Financiers.

5. PROCUREMENT

The Lead Financier for each Project shall ensure that all assets and services financed either by such institution's loans or by funds made available from the Trust Fund shall be procured in a manner compliant with such institution's procurement rules and procedures which in turn conform to internationally accepted standards open at least to all enterprises established in either an EU Member State⁴ or a member of the African, Caribbean and Pacific Group of States and including the award of contract to the tender offering the best value for money, in compliance with the principles of transparency and equal treatment for potential contractors.

All parties to this Trust Fund Agreement agree that contracts financed by the Trust Fund shall respect internationally agreed core labour standards, in particular the conventions related to freedom of association and bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation and the abolition of child labour. Bidders for contracts that are directly financed by the Trust Fund will be required to confirm in writing their adherence to these core standards. The Lead Financier shall take measures to encourage, where feasible, the widest participation of natural and legal persons of ACP States in the performance of the contracts financed by the Trust Fund.

Each proposal to the Trust Fund shall contain confirmation that the Lead Financier will apply procurement procedures which shall comply with the conditions set out in the preceding paragraph

6. ACCOUNTS AND TECHNICAL AND FINANCIAL CHECKS

The Lead Financier shall keep accurate and regular records and accounts of the implementation of a Grant Operation. Separate accounts shall be kept for every Grant Operation, and shall detail all income and expenditure. The accounting rules of the Lead Financier will apply based on the understanding that these rules and regulations conform to internationally accepted standards.

⁴ 15 EU Member States under the 9th EDF, 25 EU Member States under the 10th EDF (+ eventually Bulgaria and Romania)

Financial transactions and financial statements shall be subject to the internal and external auditing procedures laid down in the Financial Regulations, Rules and directives of the Lead Financier.

The Lead Financier shall, until at least five years after the end date as specified in article 12.5:

- keep financial accounting documents concerning the activities financed by the Trust Fund's contribution and,
- make available to Donors, upon reasonable request, all relevant financial information, including statements of accounts concerning the Grant Operation, whether they are executed by the Lead Financier or by implementing partners. Should a Donor request substantial volumes of financial information, the Manager will be entitled to require a contribution to costs from the requesting Donor, based upon agreed calculations.

In conformity with its financial regulations, the European Communities may undertake, including on the spot, checks related to the Actions financed by the Lead Financier.

7. ACCESS BY EUROPEAN COMMUNITY INSTITUTIONS

Each Lead Financier shall ensure that the European Court of Auditors, OLAF and any other competent European Community body has access to such documents and information in relation to the utilisation of Trust Fund resources as is necessary to enable such bodies to perform their obligations under European Community law.

8. UNUSED TRUST FUND MONIES

In the event that the first disbursement of a long term loan financing to be provided by a Lead financier in respect of which any Grant Operation was approved:

- (i) is not made available to the relevant Project within 15 months following reception of trust fund monies by Lead financier; or
- (ii) is fully repaid by anticipation,

the relevant Lead Financier shall repay to the Manager any unused Trust Fund monies disbursed to it in respect of that Grant Operation together with interest accrued thereon at a rate equal to Euribor 3 months minus 12,5 bp since the date of disbursement.

9. RECOVERY

In the event that a Lead Financier uses Trust Fund monies in a manner which appears to breach in any material respect the provisions hereof, the Executive Committee will instruct the Manager to inform the Lead Financier in writing, asking the the Lead Financier to provide an explanation within 15 working days.

Where recovery is justified, the Lead Financier undertakes to repay any amounts due to the Trust Fund within 45 days of receiving a written repayment request from the Manager. . If the Lead Financier fails to repay by the due date, the sum due shall bear interest at the rate of EURIBOR 1 month + 200 bp The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.

Bank charges incurred by the repayment of amounts due to the Trust Fund shall be borne entirely by the Lead Financier.