

CORPORATE

FEMIP Trust Fund

Rules of establishment
and administration



European
Investment
Bank





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WHEREAS

1. In March 2002, the Barcelona European Council decided to enhance the existing activities of the Bank in the Mediterranean Partner Countries¹ through the creation of the Facility for Euro-Mediterranean Investment and Partnership (the “**FEMIP**”). The Council's overall objective was to *“stimulate private sector development in our Mediterranean Partner Countries, in order to facilitate a higher level of economic growth consistent with the growth of the labour force in the region.”*
2. Following consultations with the Mediterranean Partner Countries, the European Council of 12th December 2003 endorsed the conclusions reached on 25th November 2003 by the ECOFIN Council to reinforce the FEMIP within the Bank, leading to the creation of a “reinforced FEMIP”. In particular, the ECOFIN Council decided to strengthen the FEMIP operations with a number of features and instruments in support of private sector, including the establishment of a trust fund allowing donors to complement on a voluntary basis the Bank’s own resources as well as the financial resources provided to the Bank by the European Community budget.
3. The Bank and a number of Donors have entered into discussions to establish a trust fund dedicated to the Mediterranean Partner Countries, directing resources to operations in certain priority sectors which can be enhanced through the provision of technical assistance or made financially viable via a risk capital operation (the “**FTF**”).
4. By a decision dated 14th October 2004, the Bank’s Board of Directors approved the Rules Relating to the Establishment and Administration of the FTF. By subsequent decisions dated 16 June 2011 and 8 February 2013, pursuant to unanimous decisions of the Donors, the Bank’s Board of Directors has approved revised rules. By a later decision dated 28 March 2018 (the “**2017 Amendment**”), pursuant to a new unanimous decision of the Donors, the Bank’s Board of Directors has approved these revised rules (the “**FTF Rules**”).

¹ Eligible countries of the FEMIP TF are: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine*, Syria, and Tunisia. The EIB will start operating in Libya after it signs a Framework Agreement with the country – currently under preparation. Following EU sanctions in November 2011, the EIB has suspended all loan disbursements and technical advisory contracts for projects in Syria. Lybia and Syria will become eligible under FTF once eligible under EIB financing.

* This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the Member States on this issue.

Article 1 PURPOSE

1.1 General Purposes of the FEMIP Trust Fund

The purpose of the FTF is to accept and make use of the FTF resources in order to foster private and public sector development in the Mediterranean Partner Countries.

1.2 Guiding principles

Specific key objectives to achieve this goal include: (i) developing an enabling environment for private and public sector activity by fostering the creation of adequate capital and human “infrastructure” in the region; and (ii) fostering and diversifying the availability of financial instruments for the private sector.

The FTF is based on the following guiding principles:

- *Complementarity*: the FTF aims at filling gaps in the Bank mandates and providing complementary funds to the ENPI programme in the FEMIP region. Accordingly, the FTF aims at financing activities that cannot currently benefit from similar resources under existing Bank mandates in the FEMIP area. The FTF therefore complements existing instruments.
- *Innovation*: FTF focuses on innovative proposals, which do not necessarily require large amounts of resources, but can provide high added value to the Mediterranean Partner Countries.
- *Catalytic Impact*: the FTF encourages catalytic opportunities by providing funding for activities that can contribute to subsequently mobilising resources, partners, or further technical assistance in supported areas.
- *Ownership and Feasibility*: the FTF is a demand-driven instrument. The Bank, acting as the administrator of the FTF, shall consult with Mediterranean Partner Countries as to priority areas of activity for the FTF. The FTF ensures that partner countries are closely involved throughout the life of supported operations.
- *Cost-Sharing*: final beneficiaries, whenever possible, shall make an appropriate contribution to the operations financed under the FTF in accordance with modalities to be determined by the Donors and the Bank.
- *Flexibility*: to conform to the principles above, the FTF shall be a relatively flexible instrument, capable of responding efficiently to the changing needs of the Mediterranean Partner Countries, in accordance with the activities referred to in Article 3.1.

1.3 Commencement of Operations

The first meeting of the Donors (as defined in Article 2.2) to the FTF will be called by the Bank when Contribution Instruments representing Contributions for an amount at least equal to ten million euros (€ 10,000,000) have been signed by Donors and received by the Bank pursuant to Article 2.2 below.

Article 2 RESOURCES

2.1 Resources

The resources of the FTF shall consist of:

- (a) amounts accepted by the Bank for inclusion in the FTF pursuant to Articles 2.2 to 2.4;
 - (b) income generated by the activities of the FTF and any capital returned on completion of an operation;
- and
- (c) the interest accrued on the balance of the FTF Account.

2.2 Contributions

- (a) Any Member State of the European Union (EU), the European Commission, beneficiary countries and European Free Trade Association (EFTA) countries (a "**Donor**") may contribute funds (a "**Contribution**") to the FTF. Such funds shall be contributed by a Donor pursuant to a letter ("**Contribution Instrument**"), which shall be delivered to the Bank and shall specify the amount of the Contribution. The Contribution Instrument shall include the elements listed in Annex 1 hereto and may contain such other matters as may be required or permitted by these FTF Rules. When the Assembly of Donors (as defined in Article 4 below) so decides, Contributions from other sources will be accepted.
- (b) On an exceptional basis, the Assembly of Donors may approve the receipt of funds to the FTF from third parties (a "**Third Party Contribution**") which shall be subject to Annex 2 of these FTF Rules.
- (c) Except as otherwise accepted by the Assembly of Donors, the minimum initial amount of a Contribution Instrument is one million euro (€1,000,000).
- (d) By signing a Contribution Instrument, the Donor shall be deemed to accept the application of these FTF Rules to the funds contributed under such Contribution Instrument.
- (e) A Contribution can be provided at any time of the duration of the FTF. A Donor may also at any time decide an increase in the amount of its Contribution by delivering a further Contribution Instrument. The provisions of these FTF Rules relating to Contributions shall apply equally to additional amounts so contributed.
- (f) Up until the 2017 Amendment, Contributions from EU and EFTA countries as well as beneficiary countries and the European Commission were automatically accepted upon receipt of the Contribution Instrument and payment of the funds. Following the 2017 Amendment, Contributions from a Donor are accepted upon approval by the Bank. Contributions from other sources and Third Party Contributions are subject to unanimous approval by the Assembly of Donors and the Bank.

2.3 Payment of Contributions

Each Contribution shall be denominated in euro and shall be made available to the Bank in immediately available funds. Contributions shall be made (i) as a single installment, or (ii) in tranches as set out in the relevant Contribution Instrument.

2.4 Replenishment

When the level of resources left in the fund so requires, the Bank may request from any Member State of the European Union, the European Commission, beneficiary countries as well as other sources a Contribution Instrument as defined in Article 2.2 or, as the case may be, a further Contribution by way of replenishment, in accordance with Article 2.2.

Article 3 OPERATIONS

3.1 Scope of Activity

The Bank will coordinate closely with the European Commission and other bilateral and multilateral agencies to avoid any duplication of efforts and overlapping activities and to ensure coherence and complementarity with EU external policies.

The operations of the FTF comprise three windows, namely the Technical Assistance window, the Private Sector Support window and the Democratic Transformation Support Window:

(i) Technical Assistance Window

The FTF is used to finance upstream technical assistance activities not eligible for financing under other EIB instruments such as the ENPI-funded FEMIP Technical Assistance envelope. Activities which could fall under the scope of this window are policy, legal, regulatory and institutional reform, sector development strategies, capacity building, and training.

(ii) Private Sector Support Window

Under this window, the FTF aims at increasing the scope and the range of financial instruments currently available to directly support private sector development in the Mediterranean Partner Countries. In particular the FTF focuses on increasing the Bank involvement in equity, quasi-equity and guarantee type operations, with special emphasis on complementing the ENPI-funded FEMIP Risk Capital envelope.

(iii) Democratic Transformation Support Window

This window is used for immediate democratic transformation and transition needs in Mediterranean Partner Countries and focuses on initiatives that can demonstrate catalytic economic effects. The support provided will be aligned with the EU policy objectives and will be complementary to the initiatives by the European Commission and the European External Action Service for the economic transition priorities agreed with the Mediterranean Partner Countries.

The Bank, whenever needed, may create dedicated thematic envelopes in order to enhance the development impact of the Bank's activities in the Mediterranean Partner Countries.

The financial instruments under any of the three windows and these thematic envelopes may present a risk of full loss and a non-risk commensurate return.

3.2 Approval of Operations

- (a) Potential operations funded from the Contributions shall first be submitted for approval to the Bank Management Committee. If approved by the Bank Management Committee, operations shall then be submitted for approval to the Assembly of Donors in accordance with Article 4 (operations approved by the Assembly of Donors shall be referred to as the “**Eligible Operations**”). Potential operations funded from the Third Party Contributions will be approved in accordance with the terms and conditions set forth in Annex 2.

- (b) Operations cannot be eligible if available resources in the FTF after disbursements of contributions minus existing commitments for projects, and administrative fees amount to less than the proposed amount for the operation.
- (c) The Bank may extend the implementation of an operation beyond the period approved by the Donors by up to 50% without the approval of the Assembly of Donors. Any extension beyond that time will require the approval of the Assembly of Donors.

Article 4

ASSEMBLY OF DONORS

4.1 Purpose

The Assembly of Donors serves as an advisory and decision-making body for the FTF, by providing guidance on the FTF's strategy and orientations and by approving proposals.

4.2 Membership and Rules of Procedure

- (a) Each Donor who has signed and sent a Contribution Instrument to the Bank shall have the right to be represented in the Assembly of Donors and to participate in its meetings, provided that only Donors who have, at the date of the meeting of the Assembly, paid part or all of their Contribution may vote. Unless otherwise decided, Third Party Contributions pursuant to Article 2.2.(b) do not entitle the respective contributors to be represented in the Assembly of Donors and attend its meetings.
- (b) Rules relating to the organisation of meetings, quorum and vote are governed by the Rules of Procedure (the "**Rules of Procedure**") of the Assembly of Donors.
- (c) The Assembly of Donors approves the Rules of Procedure. The Rules of Procedure shall be in line with the FTF Rules. In the event of there being a conflict between the FTF Rules and the Rules of Procedure, the FTF Rules shall prevail.
- (d) The Rules of Procedure may be modified by a unanimous decision of the Assembly of Donors on a proposal by the Bank.

4.3 Responsibilities

The Assembly of Donors shall:

- (i) determine the principal orientations and strategies of the activities financed or to be financed with the resources of the FTF;
- (ii) authorise the use of FTF resources for operations submitted to it by the Bank, in accordance with the provisions of Article 3.2;
- (iii) review the effectiveness of the activities financed with the resources of the FTF;
- (iv) approve the annual FTF financial statements in accordance with Article 6.2;
- (v) approve a report on the activities financed with the resources of the FTF (the "**Annual Report**");
- (vi) ensure that the appropriate visibility is given to the activities financed by the FTF, taking into account the needs of the various Donors;
- (vii) authorise Contributions from other sources as mentioned in Article 2.2(a);
- (viii) authorise Third Party Contributions as mentioned in Article 2.2(b);

- (ix) approve or reject proposed amendments to the FTF Rules, in accordance with Article 9;
- (x) approve and revise its Rules of Procedure in accordance with Article 11 of the Rules of Procedure;
- (xi) approve the minutes of the Assembly of Donors in accordance with the Rules of Procedure;
- (xii) exercise other functions that may be necessary from time to time to contribute to the achievement of the objectives of the FTF; and
- (xiii) decide the termination of the FTF, in accordance with Article 8.

The responsibilities under Articles 4.3(ii), 4.3(iii) and 4.3(vi) do not apply to operations funded from Third Party Contributions.

Article 5

ADMINISTRATION AND MANAGEMENT

5.1 Administration

The FTF and its resources are managed and administered by the Bank acting on behalf of the Donors and in accordance with Article 5.2 below, the provisions of these FTF Rules and such other guidelines which may be adopted by the Assembly of Donors in accordance with these FTF Rules.

The Bank shall fulfill its role by:

- (i) making available the Bank staff and other experts with the skills and competence required to administer the FTF;
- (ii) preparing and administering Eligible Operations, including entering into agreements with beneficiaries, where appropriate, and otherwise operating the FTF in accordance with the provisions of these FTF Rules;
- (iii) liaising to the extent necessary to fulfill its managerial role, with Donors and other relevant partners;
- (iv) preparing the Annual Report for review and approval by the Assembly of Donors;
- (v) preparing the meetings of the Assembly of Donors and serving as secretariat of such meetings;
- (vi) drawing up an indicative programme of activities for the FTF for submission to the Assembly of Donors;
- (vii) submitting to the Assembly of Donors all agreed reports detailed in Article 6.4 of these FTF Rules and technical documentation, including the Annual Report. Such reports will provide a comprehensive overview of the implementation of the FTF's programme.
- (viii) ensuring that in its publications, in its communications with recipient countries and entities and the media, appropriate visibility is given to the FTF and its Donors; and
- (ix) carrying out such other functions as may be necessary for the efficient administration of the FTF, except for functions which pertain to the competence of the Assembly of Donors and have not been delegated to the Bank.

5.2 Operating Procedures

For financial instruments under the FTF, the Donors acknowledge and accept the risk of full loss and of the lack of a risk-commensurate return. The Donors agree that for such instruments under the FTF, the Bank will derogate from certain of its standard risk-related rules, policies and procedures applied to financial instruments entered into at its own risk.

Procurement of goods, works and services financed from the resources of the FTF will be administered in accordance with the Bank's procurement policy for its operations. The Bank's transparency policy shall apply to the FTF and its operations.

The Bank may adopt such internal operating procedures, compatible with these FTF Rules, as shall be considered necessary or appropriate for the efficient administration of the FTF.

5.3 Administrative Fee

For the administrative and operational support and financial management of the FTF, the Bank shall receive from the FTF a fixed fee of 4% of the total amount of the Contributions made available to the FTF for such activities. Such fee shall be payable out of the amount of the Contributions at the time the Contribution is actually paid in.

With respect to Third Party Contributions, the Bank may in addition charge a fee for administrative and operational support, and such fee shall be payable out of the amount of the Third Party Contributions.

Article 6

ACCOUNTING AND REPORTING

6.1 Accounts

- (a) The Bank shall open a separate account in its books, called "FTF Account" for the receipt of the Contributions and the disbursement of the monies to the Eligible Operations. The Bank shall maintain the accounts of the FTF in euro or other currencies approved by the Assembly of Donors. The bank shall prepare the FTF financial statements in EUR, in accordance with accounting policies described in the notes to the financial statements. The Bank will invest unused FTF resources and transmit the proceeds to the FTF. The details of how such unused funds shall be invested shall be set out in a side letter provided by the Bank to the Donors.
- (b) The financial year of the FTF is the calendar year.

6.2 Approval of Financial Statements

Once they have been audited in accordance with Article 7.1 below, the FTF's financial statements shall be submitted to the Assembly of Donors for review and approval.

6.3 Valuation of Currencies

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 unit of account of the Bank, the valuation shall be made by the Bank, using the same principles as the Bank applies for its ordinary operations.

6.4 Information and Reporting

The Bank shall provide each Donor with:

- the Annual Report, describing the operations of the FTF;
- yearly audited financial statements;
- operation completion reports;
- general policy documents related to the FTF.

In the context of each review of the FEMIP mandate (and for the first time in December 2006), the Bank shall provide the Donors with an evaluation report analysing the impact of operations financed by the FTF in the Mediterranean Partner Countries.

Limited additional reporting may be agreed with any of the Donors on a bilateral basis, in which case the additional reports will be shared with all Donors.

Article 7 AUDIT AND CONTROL

7.1 Audit

Financial statements with respect to the FTF shall be subject to external auditing. The costs of such audit shall be borne by the FTF.

7.2 Control

The management of the FTF by the Bank pursuant to Article 5.2 shall include appropriate control measures.

Article 8 DURATION OF THE FTF

8.1 Termination of the Fund

- (a) The FTF shall remain in force so long as there remain funds, commitments or investments with respect to the FTF.
- (b) Notwithstanding paragraph (a) above, the FTF may be terminated at any time by a decision of the Assembly of Donors taken with the unanimous consent of Donors and the Bank.

8.2 Disposal of Resources on Termination of the Fund

Upon a decision of the Assembly of Donors in view of the termination of the FTF, the following provisions shall apply with respect to the resources of the FTF:

- (a) The Bank shall forthwith cease all activities relating to such resources, except those incidental 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 Bank shall establish appropriate financial statements, which shall be subject to the audit procedure referred to in Article 7.1 above. These audited financial statements shall then be submitted to the Assembly of Donors for approval in accordance with Article 6.2 above.

- (c) The Bank shall discuss with Donors as to possible uses of the funds available and not yet committed at the time of termination, with a view to integrate such funds into the Bank's FEMIP activities.

Article 9

AMENDMENTS

These FTF Rules may be amended upon proposal made by the Bank to its Board of Directors pursuant to a unanimous decision of the Donors. The amendments shall be deemed approved by the Donors if they have not addressed a written objection to the Bank regarding the amendments within 30 working days.

Article 10

DISPUTE RESOLUTION

The parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation or fulfillment of these FTF Rules, including its existence, validity and termination. For the purposes of any dispute hereunder the parties hereby submit to the jurisdiction of the Court of Justice of the European Union.

Article 11

FINANCIAL ARRANGEMENTS

The Bank will provide all the logistics arrangements associated with the Assembly of Donors meetings. Donors or their representative should however cover their own costs of participation.

ANNEX 1 – ELEMENTS TO BE INCLUDED IN THE CONTRIBUTION INSTRUMENT

- (i) Name of contributing country/entity (incl. name of the contact person)
- (ii) Total amount of the Contribution
- (iii) Payment modalities (number of installments, timing)
- (iv) Confirmation that the Contribution will be governed by the terms and conditions of the rules relating to the establishment and administration of the FTF.
- (v) The Contribution entity shall systematically inform the Back-Office Treasury of the EIB by email (FI_PRO_BOT_LPC_CM@eib.org) when a transfer of funds has been initiated. The EIB shall systematically confirm to the Contribution entity the receipts of funds. The SWIFT message instruction shall include the remittance information (field 70): "Contribution to FEMIP Account from [Name of the Contribution Entity]".

N.B: effective contributions are to be transferred to the following bank account in euro:

Currency: EUR
Beneficiary bank: European Investment Bank
BIC CODE: BEILLULLXXX
Direct TARGET: /RT
IBAN: LU929980000000000001

ANNEX 2 – RECEIPT OF THIRD PARTY CONTRIBUTIONS

With a view to reinforcing complementarities and coordination with other International Financial Institutions, as well as the catalytic impact and ownership of operations in the Mediterranean Partner Countries in line with the guiding principles of the FTF, the Assembly of Donors may authorize Third Party Contributions.

Article 1 (Third Party Contribution)

Third parties may contribute funds to the FTF (“Third Party Contributions”) subject to the unanimous approval by the Assembly of Donors. Once approved as FTF Resources, Third Party Contributions are subject to the special terms and conditions set forth in this Annex 2.

The approval, on an exceptional basis, of Third Party Contributions does not result in the third party acquiring the status of Donor and does not give the right to the third party concerned to be represented in the Assembly of Donors and to participate in its meetings, or in any governance structure of the FTF.

The FTF will act as an intermediary with respect to Third Party Contributions. In this respect, Third Party Contributions will not be recognized as Contributions in the FTF financial statements.

Article 2 (Third Party Agreement)

Subject to the approval of the Bank Management Committee and the Assembly of Donors, the Bank may sign, in its role of FTF manager, an agreement with third parties (“Third Party Agreement”) specifying the name of the third party (including name of the contact person), nature of the Third Party Contribution, applicable rules and its use. The use of the Third Party Contribution shall be in line with the general purposes of the FTF and for the projects approved as indicated in the Third Party Agreement.

Article 3 (Amount and Payment Modalities of Third Party Contribution)

The Third Party Agreement shall in principle include the total amount and payment modalities of the Third Party Contribution. When such elements are not included in the Third Party Agreement at the time of the signature, the Assembly of Donors will be separately informed about the precise amount and payment modalities of the Third Party Contribution, as soon as is practically possible.

Article 4 (Rules Applicable to Third Party Contribution)

Proposals for potential operations funded from the Third Party Contributions shall be submitted for approval to the Bank Management Committee and, upon approval, the Assembly of Donors will be informed about the approved operations.

The Third Party Contribution will be governed by the terms and conditions specified in the Third Party Agreement, including the use of such funds, reporting obligations, payment modalities, visibility, dispute settlement.

The Bank shall manage operations undertaken with Third Party Contributions in accordance with its rules and procedures. The procurement of goods, works and services financed from Third Party Contributions will be administered in accordance with the Bank’s procurement policy for its operations. The Bank’s transparency policy shall apply to Third Party Contributions.

Article 5 (Bank Account for Third Party Contribution)

The Bank shall open a separate account in its books, called “Contributions from [Third Party]” for the receipt of the Third Party Contributions, the disbursement of the monies and EIB administrative fees in line with Art. 5.3, and any potential remuneration as indicated in the Third Party Agreement. The Bank shall maintain this account in euro, US dollars or other currencies, as specified in the Third Party Agreement.

Article 6 (Financial Reporting)

The Bank will provide financial reporting to substantiate the use of the Third Party Contribution in accordance with the Third Party Agreement.

Article 7 (Audit)

Movements from the separate account(s) opened for Third Party Contributions may be subject to a separate external audit in accordance with the provisions of the Third Party Agreement.

Article 8 (General Reporting Obligations)

The Bank will ensure that the Assembly of Donors is periodically and comprehensively informed with respect to all projects and activities financed from Third Party Contributions.

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