STUDY
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European Parliament

Oversight and Management of the EU Trust Funds

Democratic Accountability Challenges and Promising Practices

Budgetary Affairs

PRE-RELEASE

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POLICY DEPARTMENT D: BUDGETARY AFFAIRS

Oversight and Management of the EU Trust Funds

Democratic Accountability Challenges and Promising Practices

STUDY

Abstract

This study provides a comparative assessment of the governance and oversight frameworks of selected EU trust funds (EUTFs) and the Facility for Refugees in Turkey (FRT). It explores how these EUTFs and the FRT add to and 'mix' the instruments set up under the EU Multiannual Financial Framework. It addresses the issue of their added value in light of the EU Better Regulation guidelines, their impact on the role of the European Parliament as a budgetary authority and the right to good administration. The study recommends reducing the complexity of the EUTF and FRT governance frameworks, and strengthening their consistency with the EU's cooperation efforts in third countries and EU Treaty values. Finally, it recommends reinforcing the venues for democratic accountability, fundamental rights and rule-of-law impact assessments, which are trust-enhancing.

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This study was requested by the European Parliament's Committee on Budgetary Control. It designated Mr Jens Geier (MEP), Mr Siegfried Mureşan (MEP) and Ms Claudia Schmidt (MEP) to follow the study.

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CONTENTS

LIST OF ABBREVIATIONS

ARTF	Afghanistan Reconstruction Trust Fund
BETFs	(World) Bank-executed trust funds
CAMM	Common Agenda on Migration and Mobility
DCI	Development Cooperation Instrument
DG DEVCO	Directorate-General for International Cooperation and Development
DG ECHO	Directorate-General for European Civil Protection and Humanitarian Aid Operations
DG NEAR	Directorate-General for Neighbourhood and Enlargement Negotiations
ECA	European Court of Auditors
EDF	European Development Fund
ENI	European Neighbourhood Instrument
EP	European Parliament
EURF	EU International Cooperation and Development Results Framework
EUTF	EU trust fund
FARC	Revolutionary Armed Forces of Colombia
FRT	Facility for Refugees in Turkey
GAMM	Global Approach to Migration and Mobility
IBRD	International Bank for Reconstruction and Development
IDOs	International development organisations
IOs	International organisations
IRRF	Integrated Results and Resources Framework
MEP	Member of the European Parliament
MPTF	Multi-Partner Trust Fund (Office)
NGOs	Non-governmental organisations
RDPP	Regional Development and Protection Programme in Ethiopia
RETFs	Recipient-executed trust funds
SINCE	Stemming Irregular Migration in Northern and Central Ethiopia
TFEU	Treaty on the Functioning of the European Union
USAID	US Agency for International Development

LIST OF TABLES

LIST OF BOXES

LIST OF FIGURES

EXECUTIVE SUMMARY

Since 2014, four EU trust funds (EUTFs) have been established outside the EU's budget. This study provides an overview of the complex governance of these four EUTFs, namely:

- EU Trust Fund for Colombia,
- EU Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa (EU Trust Fund for Africa),
- EU Trust Fund in Response to the Syrian Crisis (the 'Madad' Trust Fund), and
- EU Trust Fund for the Central African Republic (the 'Bêkou' Trust Fund).

The study also analyses a distinct type of instrument – the Facility for Refugees in Turkey (FRT). It differs from the four EUTFs mentioned above, mainly in that it remains embedded within the budget of the EU.

The current trend of setting up trust funds and going beyond the EU's budgetary rules raises a number of questions in terms of transparency and accountability. So far, policy-makers have justified going outside the EU budget on the need for more flexible and rapid EU funding instruments to respond to various emergencies outside the EU. This study critically assesses the trade-offs made in the name of 'flexibility' and 'speed' vis-à-vis democratic, legal and financial accountability and the EU's budgetary integrity. In addition, the EUTFs and the FRT add to and 'mix' the instruments set up under the Multiannual Financial Framework.

The EUTFs and the FRT are instruments for the EU's external relations. For example, the FRT accompanied the EU–Turkey 'Statement' in March 2016 and the EU Trust Fund for Africa was launched at the EU–Africa Summit on migration in Valetta in November 2015. Similarly, the EU Trust Fund for Colombia was established with an aim of showing solidarity and political support for the Colombian government in concluding the Peace Agreement with ex-combatants of the Revolutionary Armed Forces of Colombia. Thus, some argue that EUTFs may allow the EU to be more relevant and strategic in its external policies. At the same time, the question arises over whether such external policies should be elaborated in a way that overlooks the role of the European Parliament as an authority that provides democratic accountability for the EU budget and policies.

The Lisbon Treaty took the direction of reinforcing the role of the European Parliament, to bring about more coherence and democratic accountability. The instruments assessed in this study work in the opposing direction, which is extra-Treaty (the EU–Turkey Statement) and extra-budget (EUTFs), and inject intergovernmental dynamics and democratic accountability deficits into European cooperation.

This study does not constitute an audit of results or a comprehensive evaluation of these funding instruments or the projects implemented**.** More generally, the study addresses the EU added value of the EUTFs and FRT in light of the 'Better Regulation' agenda. The study focuses on the following five aspects:

- **Establishment of the EUTFs and the FRT.** The study reconstructs the processes that led to the establishment of these mechanisms in section 1.
- **The governance, management, monitoring and oversight of the EUTFs and the FRT.** Section 2 describes how the boards, Operational Committees, coordination and quality control mechanisms function as well as the venues for democratic accountability.
- **Non-EU practices on trust funds and similar instruments** that can serve as 'promising practices' for the EUTFs. In section 3, lessons are drawn from the funding instruments and mechanisms set up by the UN and by the World Bank.
- **A general overview of the results and wider consequences for EU external policies.** Section 4 illustrates the dynamics on the ground in the Central African Republic, Ethiopia and Turkey. Furthermore, the study assesses the wider consequences of this funding for EU external policies on migration and development.
- **Conclusions and recommendations.** Elaborated in section 5, the main conclusions and recommendations are also presented below.

Recommendation 1: The European Commission should carry out a 'fitness check' under the EU Better Regulation framework, to assess whether the EUTFs and the FRT have met the criteria of effectiveness, efficiency, relevance, coherence and EU added value.

The governance procedures for the EUTFs and the FRT deviate from the ordinary decision-making and potentially lead to more *mistrust* within the EU and when cooperating with third countries. Therefore, ultimately, they should be seen as exceptional or truly emergency-led instruments whose added value and effects on the ground should be very well justified and carefully monitored.

Recommendation 2: The European Commission should re-examine whether the EU Trust Fund for Africa was established correctly as an 'emergency' EUTF and should duly justify why it does not constitute a 'thematic' EUTF.

The EU Trust Fund for Africa is assessed as an interesting case in section 1, and it remains unclear why an *emergency* EUTF is needed to address the 'root causes' of migration, or what 'emergency' it seeks to address in the first place. Rather a 'thematic' EUTF would have been more appropriate in light of the scope and intervention logic of the EU Trust Fund for Africa, even though that would have excluded delegated cooperation through Member States (when Member States are also the main implementers).

Recommendation 3: An express clause in EUTF constitutive agreements should be foreseen so as to explicitly exclude implementing organisations from the governance bodies.

An assessment of the governance, management, monitoring and oversight of the EUTFs shows the major deviations in comparison with regular EU external instruments concerning governance. As the EUTF contributors, namely the European Commission and Member States, set up and make decisions on boards and Operational Committees, this changes the dynamics in selecting projects and implementing partners. The recurrent tendency to select Member States' projects, lobbied for and not rarely involving their own implementing agencies, gives rise to questions over the transparency, efficiency and impartiality of the selection process. The European Court of Auditors, in its Special Report on the Bêkou Trust Fund, also highlighted a 'conflict of interest' in the project selection procedure of its Operational Committee.

Recommendation 4: The EUTF constitutive agreements should exclude the *a priori* preference for delegated cooperation with Member States.

Despite the European Commission's readiness to use all existing flexibilities in management of the EUTFs, it could not be established that the EUTFs carry out implementation more quickly than the EU's regular external-funding instruments. The delegated cooperation comes in principle with rather high overall management costs; hence, it is not apparent *prima facie* that EUTFs are more cost-effective. For example, in its Special Report on the Bêkou Trust Fund the European Court of Auditors stressed that the management fee of 5% does not include all management costs. The *a priori* preference given to implementation through delegated cooperation with Member States can be understood from the perspective of incentivising them to contribute to the EUTFs, but it later can hinder selecting the most cost-efficient projects.

Recommendation 5: The procedures for establishing EUTFs should be rethought and fine-tuned, in order to include more venues for democratic accountability, preferably in the form of a right of consent or a right of scrutiny (or both) for the European Parliament in the constitutive agreement.

Our study shows that EUTFs suffer from a number of *ex ante* deficits in democratic accountability. Through the comitology decision-making involved, the European Parliament can voice its concerns, albeit on a limited basis (*ultra vires*). Where European Development Fund-based EUTFs are involved, as in the case of the EU Trust Fund for Africa, this option is not available, although EU budget instruments may later contribute to such structures, for instance via the Development Cooperation Instrument. The EU Trust Fund for Africa constitutes a near continent-wide instrument with large resources (EUR 3.189 billion) and with a distinguishable impact on the overall external relations on migration and development with Africa. Therefore, the EU principle of institutional balance should be respected and guarantee the meaningful involvement of the European Parliament in the establishment of the EUTFs.

Recommendation 6: Due to the increased use of EUTFs, devising any kind of EUTF should be subject to an *ex ante and ongoing/regular* assessment of the impact on fundamental rights, when the EU goes abroad. In addition, to ensure a more qualitative overview of the project's societal effects and human rights impacts, priority should be given to funding independent non-governmental organisations (NGOs).

The impact on fundamental rights needs to be taken fully into account when designing the EUTFs. The European Ombudsman has already concluded in relation to the FRT that when the EU goes abroad even via a political agreement, fundamental rights should be respected. In addition, establishing such a large instrument should be subject to a proper *ex ante* and ongoing/regular impact assessment, including on fundamental rights, in line with the good governance practices of the European Commission. Independent watchdog NGOs should be enabled to critically monitor the government policies of third-country partners, as well as the impacts of the EU-funded projects.

Recommendation 7: The EUTF decision-making procedures in Operational Committees on financing actions should include a right of information and a right of scrutiny for the European Parliament, as in the case of those under comitology.

It is positive that the Members of the European Parliament have gained observer status in the EUTF boards and the Commission responds regularly to their questions on EUTFs. Nevertheless, the European Parliament is not represented in the EUTF Operational Committees, where decisions on the actions to be financed are taken. Although the European Parliament is not part of the executive branch, it is important to safeguard the European Parliament's rights of information and of scrutiny. These rights would normally be granted under the comitology structure for funding regulations and could be replicated.

Recommendation 8: Instead of developing individual models for results-monitoring frameworks, the EUTFs and the FRT should foresee the implementation of a more harmonised model consistently applied across these different instruments.

The study shows that the different EUTFs and the FRT are each developing results-monitoring frameworks, some of them promising, with different systems, apps and websites. It would be advisable for the Commission to share more of these experiences and potentially identify best practices in results monitoring, to be implemented consistently across the EUTFs and the FRT. This would also mitigate the issue of different reporting procedures across EUTFs and the FRT.

Recommendation 9: Following the UN's example, the Commission should set up a dedicated EUTF office to ensure consistent governance and management, including on results-monitoring frameworks. A virtual EUTF gateway should also be set up, as a single EU portal on EUTFs with easy access to all data regarding the EUTFs' implementation and financial situations.

This study also looks at promising practices from the UN and World Bank's management of trust funds, as well as from the EUTFs. There are certain features of the approaches by these international organisations that merit interest for better ensuring the effectiveness and robustness of monitoring and scrutiny procedures of trust funds. The UN example of having a dedicated Multi-Partner Trust Fund (MPTF) Office that facilitates coordination and information sharing across different trust funds constitutes one of these. Additionally, the UN MPTF Office has an online platform where harmonised financial and governance data of all its trust funds is published and updated daily. This may enhance financial transparency by enabling the public to access data about donations and transfers of funding and to compare trust funds.

Recommendation 10: Special focus should be given to ensuring that the objectives of the trust funds are fully consistent with EU general principles and legal commitments laid down in the EU Treaties, and that they build 'partnerships' ensuring a balanced EU policy approach. Projects covering one area must not be inconsistent with (or run contrary to) other EU policies and objectives, including on democracy, the rule of law and human rights, as well as respect of UN principles and instruments.

The UN and World Bank show a clearer definition of their trust fund objectives against which to measure results, e.g. the UN Sustainable Development Goals and national development strategies. By contrast, EUTF objectives are broadly defined and often lack clarity, legal certainty or a common EU understanding in line with EU general principles and fundamental rights obligations. This in turn makes the use of (output, outcome and impact) indicators a rather limited exercise from a methodological perspective when measuring actual results and impacts on the ground.

* * *

In all, understanding that the EU budget's resources are limited and reaching their boundaries should trigger a strategic process within the Commission and the European Parliament concerning what the 'exit strategy' from the increasing use of 'emergency funding' for cooperation with third countries on migration actually is. Continuing to rely on ever-increasing funding amounts to obtain cooperation with third countries in this field will prove unsustainable in the medium to long term. Over-reliance on third countries to solve internal EU policy dilemmas may in fact expose the EU to future 'crises' by making cooperation profoundly dependent on the political willingness and stability of the third-country governments and authorities concerned.

Lastly, as these EUTFs and the FRT are considered to be 'emergency tools' by their own logics, the European Commission should chart a path back to 'normality' and ordinary procedures as soon as possible. In light of the upcoming Multiannual Financial Framework negotiations and the revision of the Financial Regulation, the EU institutions should work together to preserve as much as possible the integrity of the EU budget, thereby foreseeing increasing possibilities *within* the EU budget structures to respond to any emergencies. This would reduce the need to set up instruments such as the EUTFs and the FRT, which despite their potentially valuable contributions, inherently pose challenges for the integrity of the EU budget, its democratic oversight and general EU principles, such as the one of inter-institutional balance. They also pose far-reaching issues for consistency in EU foreign affairs priorities, commitments and policies. All these steps are necessary ways forward in order to ensure that EU funding does indeed enhance trust and not mistrust within the EU and when cooperating with third countries.

> *"In light of the upcoming Multiannual Financial Framework negotiations and the revision of the Financial Regulation, the EU institutions should work together to preserve as much as possible the integrity of the EU budget, thereby foreseeing increasing possibilities within the EU budget structures to respond to any emergencies."*

INTRODUCTION

Fuelled by the need for flexible and rapid EU funding instruments to respond to crises, four EU trust funds (EUTFs) have been established since 2014 (see Table 1). These different EUTFs bring together funding from different EU geographical and thematic instruments. In addition to the EUTFs, the Facility for Refugees in Turkey (FRT) provides a coordination mechanism for funding from various EU instruments and humanitarian aid, thus not taking the funding out of the EU budget. The EUTFs and the FRT have proven to be potent tools for the EU's external relations, with the FRT accompanying the EU–Turkey Refugee 'Statement' in March 2016 and the EUTF for Africa being launched at the EU–Africa Summit on migration in Valetta in November 2015.

Table 1. Overview of EU trust funds and the Facility for Refugees in Turkey – Main characteristics

INSTRUMENT/ MECHANISM	AIM	TYPE	GEO-GRAPHICAL SCOPE	AMOUNT PLEDGED (EUR million)	AMOUNT DISBURSED (EUR million)	YEAR SET UP
EU Trust Fund for Colombia [a)]	Supporting implementation of the Peace Agreement	Post-Emergency/ extra-EU budget	One country (Colombia)	95	Contracted – 72.9 [f)]	2016
EU Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa [b)]	Supporting goals set by the EU–Africa Valetta Summit	Emergency/ extra-EU budget/ European Develop-ment Fund-based	Regional (North Africa, the Horn of Africa, Sahel/ Chad Lake)	3.189	488.3 (contracted – 1.319) [g)]	2015
Facility for Refugees in Turkey [c)]	Supporting implementation linked to the EU–Turkey Statement	Emergency/ within the EU budget	One country (Turkey)	3.000	1.885 (contracted – 3.000) [j)]	2015
EU Trust Fund in Response to the Syrian Crisis – the 'Madad' Trust Fund [d)]	Linked to the ongoing conflict in Syria	Emergency/ extra-EU budget	Regional (Syria, Iraq, Western Balkans, Turkey)	1.410 [k)] (for 2017 alone!)	468.3 (contracted – 871.6 – for 2017 alone!) [l)]	2014
The EU Trust Fund for the Central African Republic – the 'Bêkou' Trust Fund [e)]	Linked to the ongoing conflict in the Central African Republic	Emergency/ extra-EU budget/ European Develop-ment Fund-based	One country (Central African Republic)	146 (84 received by the end of 2016) [m)]	Contracted - 70.9 [n)]	2014

Notes:

[a)] Agreement Establishing the European Union Trust Fund for Colombia, and Its Internal Rules ('Constitutive Agreement') between the European Commission and Member State Donors, Brussels, 2016.

[b)] Agreement Establishing the European Union Emergency Trust Fund for Stability and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa ('Constitutive Agreement'), and Its Internal Rules between the European Commission and Spain, La Valetta, 2015.
[c)] Commission Decision of 24 November 2015 on the coordination of the actions of the Union and of the Member States through a Coordination Mechanism – the Refugee Facility for Turkey – C(2015) 9500 Final, Strasbourg.
[d)] Agreement Establishing the European Union Regional Trust Fund in Response to the Syrian Crisis, 'the Madad Fund', and Its Internal Rules ('Constitutive Agreement') between the Directorate-General for Development Cooperation and the Italian Ministry of Foreign Affairs and International Development, Ref. Ares(2016)1329575 (Updated Version), Brussels, 2016.
[e)] Agreement Establishing the European Union Trust Fund for the Central African Republic, 'the Bêkou EU Trust Fund', and Its Internal Rules ('Constitutive Agreement') between the European Commission and the Netherlands, Germany and France, Florence, 2014.
[f)] It is presumed, that only for four projects approved by EUTF Colombia on January, 2017 there were 11 million paid, as it was confirmed during the interviews that these projects have already started. In addition, there were 17 additional projects approved/contracted in July and November, 2017 worth of additional EUR 61,9 million.
[g)] EUTF Africa as of 27 of November, 2017 - https://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa_en.
[j)] Based on the document "EU Facility for Refugees in Turkey: projects committed/decided, contracted, and disbursed – Status on 12/01/2018". https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/facility_table.pdf.
[k)] Based on the "EU Regional Trust Fund in response to the Syrian Crisis – Factsheet", updated as of January 2018. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eutf_syria_factsheet-english.pdf. The sums are provided for 2017 only and does not give overview for the overall pledges from 2014.
[l)] "EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund' Projects contracted - Status 19/01/2018" https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/madad_fund_signed_contracts_19_jan_2018.pdf.
[m)] European Court of Auditors (2017) Special Report "The Bêkou EU trust fund for the Central African Republic: a hopeful beginning despite some shortcomings", p. 6.
[n)] European Court of Auditors (2017) list of contracted projects available in Annex 1 of the Special Report, p.2.
Source: Authors' compilation.

The European Commission has hailed the EUTFs and the FRT as tools for increased flexibility and speed.[1] Others argue that these EUTFs may allow the EU to become more strategic and comprehensive in its external action.[2] There are, however, a number of unresolved questions around these EUTFs and the FRT. In essence, most of these questions stem from the fact that these EUTFs and the FRT add to and 'mix' the instruments set up under the Multiannual Financial Framework. This creates an increasing degree of fragmentation and complexity, leading to a lack of clarity, transparency, and mistrust. The main challenge is whether the EUTFs and the FRT respect the integrity of the EU budget and the rules and principles that govern it. Such lack of clarity also raises questions about the role of the European Parliament (EP) as part of the budgetary authority that provides democratic accountability for the EU budget.

These challenges with respect to the integrity of the EU budget and democratic accountability are inherent to an approach that is extra-Treaty (e.g. the EU–Turkey Statement) and extra-budget (EUTFs), and which brings intergovernmental dynamics and democratic accountability deficits back to European cooperation. The 2009 Lisbon Treaty had precisely sought to reinforce the role of Union coherence and democratic accountability in the Union.

It is the aim of this study to provide some clarity by carrying out an assessment of the EUTFs and the FRT, thereby informing a democratic debate on the current state of affairs and on the choices for the

[1] See e.g. European Commission, "The European Union Emergency Trust Fund for Stability and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa – Strategic Orientation Document", Brussels, 2015(d).

[2] Volker Hauck, Anna Knoll and Alisa Herrero Cangas, "EU Trust Funds – Shaping More Comprehensive External Action?", ECDPM Briefing Note No. 81, European Centre for Development Policy Management, Maastricht, 2015.

future, in particular, for the next Multiannual Financial Framework.[3] The tendency of recent years to add new EUTFs should be reflected upon carefully, in order to reduce complexity, increase coherence and consistency of EU action, and reinforce venues for democratic accountability that are trust-enhancing.

It should be underlined that this study is not an audit or evaluation and does not amount to drawing conclusions about the added value of specific projects. Rather, it focuses on the overall governance, management, monitoring and oversight structures of EUTFs and the FRT.

The study was based on qualitative data gathering and analysis methods. Besides the desk research of the most relevant legal and policy documents, interactive research methods, such as interviews, focus group discussion and an online survey were conducted, solely for this research. The authors have conducted 22 face-to-face semi-structured interviews with the relevant stakeholders from the different Directorates General of the European Commission, European External Action Service and the European Court of Auditors (see Anonymised list in the Annex 1). Online survey as well as focus group discussion were conducted with International Organisations (IOs) and other Non-Governmental Organisation (NGOs) experiences with EUTFs and/or the FRT. Interviews, online survey and focus group discussion have all constituted the background research of this study under the conditions of confidentiality and anonymity.

The study addresses their added value in light of the 'Better Regulation' agenda and guidelines of the European Commission and its specific understandings of such evaluations. This study focuses on the following five aspects, covered in sections 1–5:

- **Establishment of the EUTFs and the FRT.** The various EUTFs and the FRT are designed to present very different funding instruments and for the FRT, a coordination mechanism. These differences in set-up design are key to understanding their current convergence and divergence in management and oversight. The study reconstructs in section 1 the processes that led to the establishment of the EUTFs and the FRT.

- **Current state of affairs concerning the governance, management, monitoring and oversight of the EUTFs and FRT.** Section 2 of the study describes the current governance and management rules and practices in the EUTFs and the FRT. In particular, this relates to how the different involved boards, Operational Committees, coordination and quality control mechanisms function. The monitoring and oversight mechanisms are described with a focus on venues for democratic accountability.

- **Assessment of the degree to which non-EU practices on trust funds and similar instruments can serve as 'promising practices' for the EUTFs.** This amounts to an exploration of the functioning of non-EU instruments similar to trust funds and facilities in section 3. At the international level, this relates primarily to funding instruments and mechanisms set up by the UN and by the World Bank.

- **General overview of results and analysis of the wider consequences for EU external policies.** Section 4 presents a quantitative overview of approved, contracted and implemented projects, categorised by the implementing partners and priorities pursued. The study presents

[3] Jorge Núñez Ferrer, "The Multiannual Financial Framework Post-2020: Balancing Political Ambition and Realism", CEPS Policy Insights No. 2016/2, CEPS, Brussels, 2016.

qualitative country case studies to illustrate the dynamics on the ground in the Central African Republic, Ethiopia and Turkey. Furthermore, we assess the wider consequences of this funding for EU external policies on migration and development.

- **Conclusions and recommendations.** The study finishes by putting forward research-based, crosscutting conclusions and recommendations. It is argued that that EUTFs and the FRT raise a number of challenges for EU budgetary integrity and for democratic accountability. Specifically, at the governance level a number of risks are evident due to deviations from the regular governance of EU funding. This relates primarily to the role of implementing partners and to weakened venues for democratic accountability. The study highlights how more exchange of 'promising practices' between EUTFs and the FRT is possible, such as on results monitoring. Finally, the study urges a rethink about the EU funding structures and choices, to uphold the integrity of the EU budget, democratic safeguards, and sustainable migration and development policy goals.

1. COMPARING THE TRUST FUNDS' FOUNDING ACTS AND ORIGINS

This section compares different funds in light of how they were established and the rules put forward at their foundation. It briefly describes the legal founding acts and the origins of policy choices for the five selected instruments of this study:

1) EUTF for Colombia,
2) EU Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa,
3) EU Trust Fund for the Central African Republic or the 'Bêkou' Trust Fund,
4) EU Regional Trust Fund in Response to the Syrian Crisis – the 'Madad' Trust Fund, and
5) FRT.

These four EUTFs and the FRT differ quite substantively. There is a major difference between the four trust funds covered and the FRT. However, the study also identifies divergences between the four trust funds. Some of these differences came about with the European Commission's developing experience in handling the trust funds, and some stem from the peculiar policy environments in which they emerged.

First, the study offers an overview of how the establishment procedure of the EUTFs works in general (section 1.1). The origins of the EUTFs, their respective circumstances, their levels of politicisation and the objectives pursued is another point of this assessment (section 1.2). Finally, the FRT is analysed in greater detail, since it counts with its own specificities when compared with EUTFs (section 1.3).

1.1 ESTABLISHING EUTFS

The establishment of any EUTF is bound by legal and policy choice considerations. The new Financial Regulation has legally foreseen the possibility of establishing an EUTF.[4] Art. 187 of the Financial Regulation sets out the legal basis and Art. 259 of the Rules of Application of the Financial Regulation sets out more specific rules.[5] When the European Development Fund (EDF) is involved in setting up the trust fund (as is the case for the 'Bêkou' Trust Fund and the EUTF for Africa), Art. 42 of the EDF Financial Regulation is relevant.[6]

Art. 187 of the Financial Regulation stipulates a number of conditions with which an EUTF needs to comply:

1) establishment for "emergency, post-emergency or thematic actions";
2) "added value to the Union intervention", referring mostly to a subsidiarity-type condition;
3) "Union's political visibility";

[4] Regulation (EU, Euratom) No. 966/2012 of the European Parliament and of the Council of 25 October 2012 on the Financial Rules Applicable to the General Budget of the Union and Repealing Council Regulation (EC, Euratom) No. 1605/2002, OJ L 298, 26.10.2012, 1.

[5] Commission Delegated Regulation (EU) No. 1268/2012 of 29 October 2012 on the Rules of Application of Regulation (EU, Euratom) No. 966/2012 of the European Parliament and of the Council on the Financial Rules Applicable to the General Budget of the Union, OJ L 362, 31.12.2012, 1.

[6] Art. 42 refers to Art. 187 of the Financial Regulation and designates the competent committee for the EDF (the EDF Committee as defined in Art. 8 of the EDF Internal Agreement); see Council Regulation (EU) No. 2015/323 of 2 March 2015 on the Financial Regulation Applicable to the 11th European Development Fund, OJ L 58, 3.3.2015, 17.

4) “managerial advantages;
5) “better Union control of risks and disbursements”; and
6) no duplication of “other existing funding channels or similar instruments without providing any additionality”.[7]

The bottom line is that the EUTFs should have ‘added value’ above and beyond national interventions and existing funding instruments. Moreover, the EUTFs need to be implemented in line with the general principles applicable, namely, “sound financial management, transparency, proportionality, non-discrimination and equal treatment”.[8] It is for the Commission to carry out an assessment of whether these conditions are met for the establishment of an EUTF, as well as throughout its life span. The extent to which the Commission has carried out a formal analysis of these conditions at the time of establishment has been a point raised by the European Court of Auditors (ECA) in its Special Report on the Bêkou Trust Fund.[9] As information gathered through interviews for this study suggest, such a *formal* analysis is not a standard Commission procedure before setting up an EUTF. It does not mean that these conditions are not properly examined, but it is rather done through various internal notes and meetings.[10]

The conditions for setting up the trust fund are mentioned in the legal acts involved in establishing the fund (the Commission implementing decision and constitutive agreement, as discussed below). As mentioned in section 2.2 below, the Madad EUTF for the Syrian Crisis provides a promising practice, as it sets out more extensively than the other EUTFs how the conditions for establishing an EUTF have been met.[11]

The objective motivating the establishment of an EUTF is first and most importantly the need for more flexibility and visibility. Trust funds allow for setting new objectives, combining EU funding channels hitherto circumscribed by the objectives and governance procedures of their respective regulations, and attracting further funding sources from donors (primarily Member States). As Art. 187(6) of the Financial Regulation stipulates, the contributions to the trust funds are not integrated into the Union’s budget. With the EUTFs, a policy message is given, with increased EU visibility as an actor on the given theme or area. On the other hand, the ‘political’ weight of involved EU Member States was also stressed during the interviews.[12]

Once the policy choice to establish an EUTF is made, the ‘mechanics’ work as follows: a legal structure needs to be set up – the constitutive act or agreement – and contributions need to be transferred to a specific bank account into which the collected funds are deposited.

The constitutive act is agreed between the Commission and “other donors”.[13] In practice, as is evident from the sections below, these ‘other donors’ are mostly EU Member States. Nevertheless, in principle, non-EU countries, private companies, foundations or even individuals could contribute to the fund.

[7] Art. 187(1) and (3), Regulation No. 966/2012, op. cit.

[8] Art. 187(2), ibid.

[9] ECA, “The Bêkou EU Trust Fund for the Central African Republic: A Hopeful Beginning despite Some Shortcomings”, Special Report No. 11/2017, Luxembourg, 2017(a), pp. 17–20.

[10] Interview Nos 9, 10, 11, 12, 21 and 22, European Commission, November–December 2017.

[11] Preamble recitals 11-14, Agreement Establishing the European Union Regional Trust Fund in Response to the Syrian Crisis, ‘the Madad Fund’, and Its Internal Rules, between the Directorate-General for Development Cooperation and the Italian Ministry of Foreign Affairs and International Development, Ref. Ares(2016)1329575 (Updated Version), Brussels, 2016.

[12] Interview Nos 1, 20 and 22, European Commission, November–December, 2017.

[13] Art. 187(1), Regulation No. 966/2012, op. cit.

The constitutive agreement includes a number of elements, also based on a template available for such acts.[14] It includes a preamble outlining the considerations for setting up the trust fund, its objectives, its resources, its governance and management, its financial and implementation arrangements, and some final provisions on e.g. visibility, monitoring and conflicts of interest.[15]

The constitutive agreement between the Commission and the donor cannot be qualified as an international agreement under EU law, as it is not concluded with a third country (although that is not excluded in principle). The consent of the European Parliament is thus not required in that light.[16] Under internal EU law terms, the Commission takes an Implementing decision, describing the foreseen trust fund, as well as authorising a Commission Director-General to sign the agreement.[17] These implementing decisions find their legal basis in Art. 291 TFEU falling under comitology, except for the EDF-based EUTFs.

Under the applicable comitology rules, the EP has the 'right of scrutiny' under the so-called 'examination procedure', if the competent committee (Member State representatives) adopts a favourable opinion. The right of scrutiny entails that the EP can adopt a non-binding resolution that would argue that the Commission has overstepped its implementing powers (*ultra vires*). So far the EP has not exercised this power. Still, it would remain for the Commission to decide whether to take those arguments finally on board.[18]

The rules are different for the EDF and its committee, not falling under the EU budget and the EU rules applicable to comitology (as it is extra-budget). This means that for the EUTF for Africa and for the Bêkou EUTF, the scenario of the EP's scrutiny did not apply to the decision to set up the EUTF. If funds from non-EDF instruments are at a later stage transferred to the EDF-based EUTFs, it is at that point of transfer that the only window of opportunity for the EP to use its right of scrutiny opens, but not at the time of deciding to establish them. This situation of drawing from different external funding instruments but deciding the establishment of an EUTF through the EDF Committee leads to the spread of challenges inherent to the EDF's extra-budget nature. In particular, it amounts to setting up through the EDF channel – outside the EU budget – the overall framework for a new EUTF (concretely the EUTF for Africa and the Bêkou EUTF), even though instruments from within the budget will also be governed by it.

The Commission acts through the comitology procedures to take decisions on funding contributions to the EUTFs from the existing EU funding instruments.[19] For example, when the Commission adopted the Implementing Decision regarding the European Neighbourhood Instrument (ENI) funds contributing to the Madad Trust Fund, it went through the ENI Committee under the comitology

[14] Interview No. 4, European Commission, November 2017.

[15] See e.g. Agreement Establishing the European Union Trust Fund for Colombia, and Its Internal Rules ('Constitutive Agreement') between the European Commission and Member State Donors, Brussels, 2016.

[16] Art. 216 of the Treaty on the Functioning of the European Union (TFEU) clearly refers to a 'third country' to be involved. Art. 218 TFEU stipulates the required consent of the EP in certain cases.

[17] See e.g. Commission Decision of 20 October 2015 on the Establishment of a European Union Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa, C(2015) 7293 Final, Brussels, 2015.

[18] Art. 11, Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 Laying down the Rules and General Principles Concerning Mechanisms for Control by Member States of the Commission's Exercise of Implementing Powers, OJ L55/13, 28.2.2011.

[19] See e.g. Commission Implementing Decision of 18 November 2016 on the second special measure for the 2016 ENI contribution to the European Union Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa, to be financed from the general budget of the Union, C(2016) 7277 final, Brussels, 18.11.2016.

'examination procedure'. In this case, the ENI Committee gave a positive opinion – all 28 Member States voted in favour.[20] Here, the EP has on several occasions asked for more time to assess a Commission implementing decision, for example, when the Development Cooperation Instrument (DCI) contribution to the EUTF for Africa was transferred. Yet the EP never formally used its right of scrutiny under the comitology rules.

The contributions to the trust fund are attested by a contribution certificate that outlines usually i) the amount of the contribution, ii) the date(s) at which the contribution will be made, and iii) applicable arrangements if donors wish to form a 'pool of donors'.[21] The latter arrangement is used when donors do not want to individually meet the threshold for contributions (often set at EUR 3 million), but can do so in a pool. Such donors as a group of countries will have one vote in the trust fund board. For example, the Visegrad countries have done so under the EUTF for Africa. In the case of the EUTF for Colombia, though the total sum of smaller contributors has not reached the threshold of EUR 3 million, all of them are treated as equally important contributors, as in reality all decisions are made as a consensus among all donors and not by formal voting.[22]

It is evident from the overview in this section that the establishment and funding of the trust funds is largely a Commission- and Member States-driven affair, with a negligible role for the EP in this process. The EP has never used its right of scrutiny regarding the establishment of EUTFs. Nevertheless, MEPs are getting increasingly interested in further overview and monitoring (see subsection 2.3.1 on *ex ante* democratic deficits).

It should not be forgotten that, apart from the legal and procedural aspects highlighted above, establishing an EUTF sends a strong message of commitment, showing that the EU is dealing with certain issues (e.g. migration management, development cooperation) or supporting a process (e.g. the peace process in Colombia). Any full understanding of why and how EUTFs are established should not treat 'the EU' as a monolithic actor. Rather, the inter-institutional struggles and the multi-level venues of policy-making in the EU system should be taken into account. The different Commission Directorates-General and the European External Action Service may have different experiences and viewpoints, and also Member States may pursue their different priorities.[23] Moreover, diverse EU actors attach different weight to the existing EU funding instruments, in which they have vested their interests. The EUTFs and the FRT thus arrive in a landscape already 'crowded' by financial instruments, actors and priorities.

[20] Commission Implementing Decision of 8 December 2016 on the 1st special measure for the 2016 ENI contribution to the European Union Regional Trust Fund in response to the Syrian Crisis, the 'Madad Fund', to be financed from the general budget of the Union, C(2016) 7898, Brussels, 8.12.2016.

[21] See e.g. Art. 3.2.2, Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

[22] Interview Nos 21 and 22, European Commission, December, 2017.

[23] Leonhard den Hertog, "Money Talks: Mapping the Funding for EU External Migration Policy", CEPS Papers in Liberty and Security in Europe, No. 95, CEPS, Brussels, 2016.

1.2 COMPARATIVE OVERVIEW OF THE ORIGINS OF THE EUTFS

Each of the EUTFs has different origins and logics. Some of them have been pushed primarily by Member States, such as the Bêkou Trust Fund by France, or Colombia Trust Fund by Spain, and others have been more Commission-led, such as the EUTF for Africa or the Madad Fund for Syria. The context in which they are established and the justifications for their need also differ. The policy agendas and pressures also vary considerably. For example, the policy pressures in the Commission on migration in the Mediterranean, playing into the establishment of the EUTF for Africa, are incomparable to those pressures leading up to the establishment of the Colombia EUTF. Moreover, the trust funds for one country, such as the Bêkou or Colombia Trust Funds, cannot be easily compared with multi-country and regional trust funds like the Madad Trust Fund or the EUTF for Africa. See Table 1 in the introduction for the chronological establishment of the five funds under review in this study.

The Bêkou Trust Fund was set up at a point in time when the normal EDF programming under the structure of the National Indicative Programme was difficult, as there was no legitimate interlocutor at the government level. Evidently, the Central African Republic went through violent upheaval, resulting in forced displacement on a large scale. In that context, the Commission was examining ways to approve financial aid quickly. According to the ECA's Special Report, the choice of an EUTF happened to be 'appropriate'. Nonetheless, according to the ECA the Commission should have carried out a more formal and structured analysis of whether the conditions to set up an EUTF were actually met. In addition, the Commission should have engaged in a proper needs analysis that could inform the EUTF's logic of intervention.[24]

Following up from those findings by the ECA, it is always important that the Commission takes the necessary steps to ensure that an EUTF is actually the most appropriate instrument to set up in a particular situation. It is understandable that any EUTF establishment will be affected by policy pressures and the need for speed. That notwithstanding, as deciding to establish an EUTF constitutes a step with important repercussions for the coherence and integrity of the EU budget, the time should be taken by the Commission to carry out a thorough analysis. Such analysis should assess whether there is a pressing need to establish an EUTF in a particular situation. This crosscutting conclusion is relevant also to other funds and should clearly inform the ongoing (at the time of conducting relevant interviews – October –December, 2017) revision of the EUTF guidelines by the Commission's Directorate-General for International Cooperation and Development (DG DEVCO).

The EUTF for Africa also has its idiosyncratic origin, namely as an EUTF for the Sahel Region. This region faces specific security, stability and development pressures, which were deemed to be best addressed by setting up a regional EUTF. The Lake Chad area was added only later, as this region also struggles with a number of stability and development challenges. The discussions on this EUTF for Sahel became rapidly overtaken by the issue of migration and the EU's external relations on migration with African countries in the course of 2015. In that context, two other 'windows' of the EUTF for Africa emerged, namely the Horn of Africa and North Africa windows. The current structure of the EUTF for Africa with three windows is a result of the above-mentioned developments: i) the Sahel/Lake Chad window, ii) the Horn of Africa window and iii) the North Africa window.

The Horn of Africa was seen as a major region of origin of 'irregular migrants' and refugees into the EU in 2015, whereas North Africa was seen as a major region of transit. Five North African window countries

[24] See ECA (2017a), op. cit.

that were added latest were - Algeria, Egypt, Libya, Morocco and Tunisia. After adding these subsequent windows, the EUTF for Africa has acquired a stronger migration focus. The priorities differ across the initial and latter windows, with the Sahel/Lake Chad window up until today giving much less attention to migration management, migration and development or 'root causes' of migration in comparison with the other two windows, and rather focuses on more 'traditional' development issues.

As the issue of migration in EU–Africa affairs became the policy focus of the EUTF for Africa, this changed quite radically its scope and rationales. Leading up to the EU–Africa Valetta Summit on migration in November 2015, at which the EUTF for Africa was launched, the policy pressures to show results in cooperation with Africa reached a high point. Compared with the other EUTFs, the EUTF for Africa is thus much more salient at the policy level, as part of international negotiations that resulted in the Valetta Declaration. The number of different Directorates-General involved and the 'political masters' at the Commission adds complexity. Five current recipients of the EUTF for Africa, namely - Ethiopia (Horn of Africa Window), Mali, Niger Nigeria and Senegal (Sahel/Lake Chad Window) - were recently covered by the EU's Migration Partnership Framework.[25] Migration Partnership Framework foresees 'more-for-more' conditionality on migration, such as readmissions. The EUTF for Africa helps to enable such conditionality. The case study of Ethiopia below illustrates, how the 'more-for-more' conditionality is applied in practice, when disbursing EUTF funds to speed up the issue of readmission of irregular immigrants.

Arguably, every EUTF also has an element of self-interest for the EU, though certainly not excluding many benefits for third countries. However, where an EUTF's *raison d'être* is partly the attainment of EU public policy goals, such as on migration management and readmission, this raises a number of further questions. Particularly given that the EUTF for Africa was set up as an 'emergency' trust fund, this begs the question of what was the 'emergency' to which it attempted to respond. The logic was to address the "root causes of irregular migration and displaced persons", which is inherently a development question, requiring a medium- to long-term outlook. Academic knowledge in this field is quite conclusive, underlining that drivers of migration are complex and that economic development could only reduce migration in the long term, if at all.[26]

Rather, it seems that the emergency was perceived to be at the EU's external borders, along the migration routes, and in the Mediterranean more specifically. Also, the emergency was embedded in the conclusion of a deal with African countries in Valetta, for which the EUTF for Africa indeed proved to be instrumental. In any case, the argument to address an emergency is much less clear for the EUTF for Africa (except its Sahel/Lake Chad window) than it is for the other three EUTFs that respond to a country/region in conflict, civil war and its consequences and aftermath (the Bêkou EUTF, the Syrian Crisis Madad EUTF or the Colombia EUTF). A 'thematic' EUTF for Africa, as provided by Art. 187(1) of the Financial Regulation, would perhaps have been more fitting. Yet that would have excluded the delegated cooperation, including with Member States, as the Financial Regulation clearly states that delegated cooperation is exclusive to emergency and post-emergency EUTFs.[27]

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[25] European Commission, Communication, "Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration", COM(2016) 385 Final, Brussels, 7.6.2016.

[26] Hein de Haas, "Turning the Tide? Why Development Will Not Stop Migration", *Development and Change*, Vol. 38, No. 5, 2007, pp. 819–41; Oliver Bakewell, "'Keeping Them in Their Place': The Ambivalent Relationship between Development and Migration in Africa", *Third World Quarterly*, Vol. 29, No. 7, 2008, pp. 1341–58.

[27] Art. 187(2), 2nd para. in conjunction with Art. 58(1), Regulation No. 966/2012, op. cit.

Moreover, it has not become clear during the research why an EU *emergency* trust fund as such is needed to address the 'root causes' of migration in Africa. Existing development instruments, such as the EDF and DCI, themselves appear to already have a long-term and comprehensive development rationale (economic development as well as rule of law and human rights) that is inherent to addressing root causes of migration. This links directly to one of the conditions in the Financial Regulation for an EUTF, namely that it should bring added value above and beyond existing funding channels.[28] That is not to say that the EUTF for Africa has not financed specific actions that may have added value, but rather to question whether an emergency EUTF was necessary as an instrument for this long-term objective.

The Colombia EUTF was inscribed in the Peace Agreement between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC). Both the Constitutive Agreement and the strategy document closely follow the priorities included in the Peace Agreement.[29] This sets the Colombia EUTF somewhat apart from the other EUTFs, as the EU was responding to a request of the Colombian government to support the implementation of the Peace Agreement, in particular in the area of rural development and reintegration of FARC ex-combatants. This makes the Colombia EUTF a post-emergency EUTF under Art. 178(1) of the Financial Regulation. At the same time, whereas reintegration of FARC ex-combatants can be seen as an urgent need in a post-conflict situation, some of the other actions in rural development can be regarded as more 'thematic' or as having long-term objectives.

The Colombian government is an active partner of this EUTF, and to facilitate its involvement, the EUTF for Colombia Operational Committee meetings are taking place in Bogota. In addition, the EUTF for Colombia gathered a large number of donors, as 19 Member States signed the Constitutive Agreement with the Commission (DG DEVCO and Director-General for European Civil Protection and Humanitarian Operations (DG ECHO)). Nevertheless, out of a total EUR 95 million, only a third of the contributions came from the 19 Member States. It is also the latest EUTF, as it was established in December 2016.

The Madad EUTF for the Syrian Crisis was established to deal with the emergency and potential post-emergency and has an objective to provide a "coherent and reinforced aid response to the Syrian and Iraqi crises".[30] Its geographical scope was later enlarged to include the Western Balkans, during the transit through the Western Balkans route at the height of the 'refugee crisis'.[31] The Madad EUTF also finances several actions in Turkey under the FRT, as described further below.

Although the Madad EUTF for the Syrian Crisis Constitutive Agreement follows the set-up of the other EUTFs, there are a few different aspects that are relevant for further governance and implementation**.** It suggests that this EUTF has been set up exercising a higher level of diligence and discussion. First, the Constitutive Agreement devotes a considerable part of its Preamble to explaining why the conditions for setting up an EUTF have been met in this case, arguing why it provides added value and explicitly referring to the need to map the existing programmes and projects "to ensure maximum synergies".[32] Second, the Constitutive Agreement structures the voting rights in the Operational Board

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[28] Art. 187(3), ibid.

[29] European Commission, The European Union Trust Fund for Colombia, Strategy Document, 6 December 2017 (URL).

[30] Art. 2, Agreement Establishing the European Union Regional Trust Fund in Response to the Syrian Crisis, 'the Madad Fund', op. cit.

[31] Commission Decision of 21 December 2015 Amending Decision C(2014) 9615 Final on the Estbalishment of a European Union Regional Trust Fund in Response to the Syrian Crisis, 'the Madad Fund', C(2015) 9691 final, Brussels, 2015.

[32] Preamble recitals 11-14, Agreement Establishing the European Union Regional Trust Fund in Response to the Syrian Crisis, 'the Madad Fund', op. cit.

differently from most of the other EUTFs, namely in proportion to the contribution per donor provided.[33] The other EUTFs (except for the Bêkou EUTF) give one vote per donor, as from a certain threshold amount.

This weighted system of voting rights is closer to the existing rules under funding committees (comitology). Some larger Member States like Germany have indeed complained along these lines, e.g. under the EUTF for Africa, namely that their voting rights under comitology have not been respected.[34] While that is factually correct, it concerns a policy choice to give one vote per donor, in particular to incentivise smaller Member States to contribute to the trust fund. Third, unlike the other EUTFs, the Constitutive Agreement does not give *a priori* preference to implementation through delegated cooperation agreements with Member States.[35] As argued below in section 2.1 covering governance, it is exactly this preference with respect to implementing projects that has led to a number of challenges in the case of some other EUTFs.

1.3 FACILITY FOR REFUGEES IN TURKEY

The origins and establishment of the FRT are not comparable to those of trust funds. The FRT is not an instrument but rather a coordination mechanism.[36] This means that the FRT works with and leaves untouched the existing funding instruments. Next, the novelty of the FRT is that rather than having Member State contributions to a separate bank account and other new governance procedures, the contributions are directly included in the EU budget.[37] This is done under the so-called 'external assigned revenue' referred to in Art. 21(2)(b) of the Financial Regulation. Another difference at set-up is that the contributions of Member States are not dependent on voluntary contributions as donors, like in a trust fund, but rather are linked to a binding Commission Decision.[38]

The Commission Decision that set up the FRT should thus not be confused with the implementing decisions that the Commission takes under the EUTF set-ups (authorising the signature of a constitutive agreement). Rather, the FRT was set up by a decision directly based on the EU Treaties, in particular Arts 210 and 214 TFEU, which speak of the possibility for the Commission to "take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures".[39]

The FRT origin has to be understood in the context of the EU–Turkey Statement of March 2016, even though that is not legally speaking its basis as it was set up before that date (24 November 2015). The FRT rather has to be seen in light of the Commission Joint Action Plan for Turkey. However, the FRT of

[33] Art. 6.4.1, ibid.

[34] Interview Nos 11 and 12, European Commission, November 2017.

[35] Art. 10, ibid.

[36] Commission Decision of 24 November 2015 on the coordination of the actions of the Union and of the Member States, C(2015) 9500 Final, op. cit.

[37] This is not entirely novel as similar structures under external assigned revenue through transfer agreements are already possible under some DG DEVCO-managed instruments. However, for this magnitude and in the EU neighbourhood, this is certainly novel.

[38] Still, the contributions to the FRT remain voluntary, as no interest for late payment was deemed necessary; see Commission Decision of 18 April 2017 on the Facility for Refugees in Turkey Amending Commission Decision C(2015) 9500 of 24 November 2015, OJ C 122, 19.4.2017, 4.

[39] Art. 214(6) TFEU.

course played a major role in bringing about the Statement, as Turkey clearly was going to agree to any mechanism if EU funding was mobilised.

The EU–Turkey Statement itself raises questions of legality and democratic accountability, pending at the General Court of the EU, since it is not a fully-fledged international agreement.[40] Nevertheless, the European Ombudsman in her own inquiry procedure has concluded that devising such 'gentlemen's agreements' or informal political deals should not escape compliance with the EU Charter of Fundamental Rights and the right to good administration on the side of the European Commission during their implementation. Therefore, the European Ombudsman called for a proper fundamental rights impact assessment so as to secure their legality in the implementation phase (para. 25): "for all policies and actions of EU institutions and bodies which impact on human beings, any evaluation should contain an explicit consideration of the human rights impact of those policies and actions. Such impact assessments should have regard to the principle of proportionality."[41]

The Commission and the Member States held a number of meetings, where a consensus on the Facility emerged. One of the important documents that guides the functioning of the FRT, besides the legal Commission Decision, is the Common Understanding between the Commission and the Member States. This document outlines some of the governance structure of the FRT. This document was agreed on 3 February 2016 at the level of the Committee of Permanent Representatives (Coreper) and essentially forms the backdrop of the actual start of the Facility from the moment the 'deal' with Turkey was made under the EU–Turkey Statement of March 2016.[42]

Drawing from some of the aspects under the Common Understanding, the Commission Decision on the FRT was amended on 10 February 2016.[43] This amending Decision laid down a number of elements, such as the express mention of the amounts involved (EUR 1 billion from the EU budget, and EUR 2 billion from the Member States). It also highlighted that the existing instruments' rules and regulations that are coordinated by the Facility shall be respected (the ENI, Instrument for Pre-Accession Assistance II, Instrument contributing to Stability and Peace and humanitarian aid).

The role of humanitarian aid was specifically mentioned, as well as the respect for the European Consensus on Humanitarian Aid. Although that is certainly to be welcomed, as it displays a clear commitment to respecting the existing rules applying to the EU budget, in practice this leaves unaltered the fact that humanitarian aid is mobilised on the basis of external relations considerations, namely intention to reach a deal with Turkey on the refugee and migrant flows on the Eastern Mediterranean route. Furthermore, the Common Understanding also explicitly states that "[t]he execution of assistance actions under the Facility shall be conditional upon strict compliance by the

[40] Sergio Carrera, Leonhard den Hertog and Marco Stefan, "It wasn't me! The Luxembourg Court Orders on the EU–Turkey Refugee Deal", CEPS Policy Insight No. 2017/15, CEPS, Brussels, 28 April 2017.

[41] Decision of the European Ombudsman in the joint inquiry into complaints 506-509-674-784-927-1381/2016/MHZ against the European Commission concerning a human rights impact assessment in the context of the EU–Turkey Agreement, Strasbourg, 18 January 2017.

[42] Common Understanding Establishing a Governance and Conditionality Framework for the Refugee Facility for Turkey, The 'Facility' between the European Commission and the EU Member States, Brussels, 2016.

[43] Commission Decision of 10 February 2016 on the Facility for Refugees in Turkey Amending Commission Decision C(2015) 9500 of 24 November 2015, OJ C 60, 16.2.2016, 3.

Republic of Turkey with undertakings reflected in the EU–Turkey Joint Action Plan and the EU–Turkey Statement from 29 November 2015".[44]

This explicit mechanism of conditionality is one of the unique features of the FRT, in comparison with the EUTFs. This emphasis on conditionality is also reflected in the FRT Steering Committee meetings, as they are always split up between a part on 'conditionality' without Turkey present, and then a part on the FRT allocations themselves, where Turkey is present.[45] The Common Understanding thus established conditionality in light of the Joint Action Plan and the November 2015 EU–Turkey Statement. Therefore, formally speaking the Facility is not linked to the EU–Turkey Statement of March 2016, but at the policy level they of course could not be separated.

The setting-up of the FRT and its origins reveal how the Commission, amid a 'crisis' atmosphere, tried to work out a 'creative' funding solution.[46] Clearly, the Commission was partly entering unchartered territory. The choices of using a Commission Decision directly on the basis of the Treaties and staying within the EU budget are as such to be commended, as they avoid working without the EU budget structures, as the EUTFs partly do.

[44] Art. 24, Common Understanding Establishing a Governance and Conditionality Framework for the Refugee Facility for Turkey, op. cit.

[45] Interview No. 5, European Commission, November 2017.

[46] Ibid.

2. GOVERNANCE, MANAGEMENT, MONITORING AND OVERSIGHT

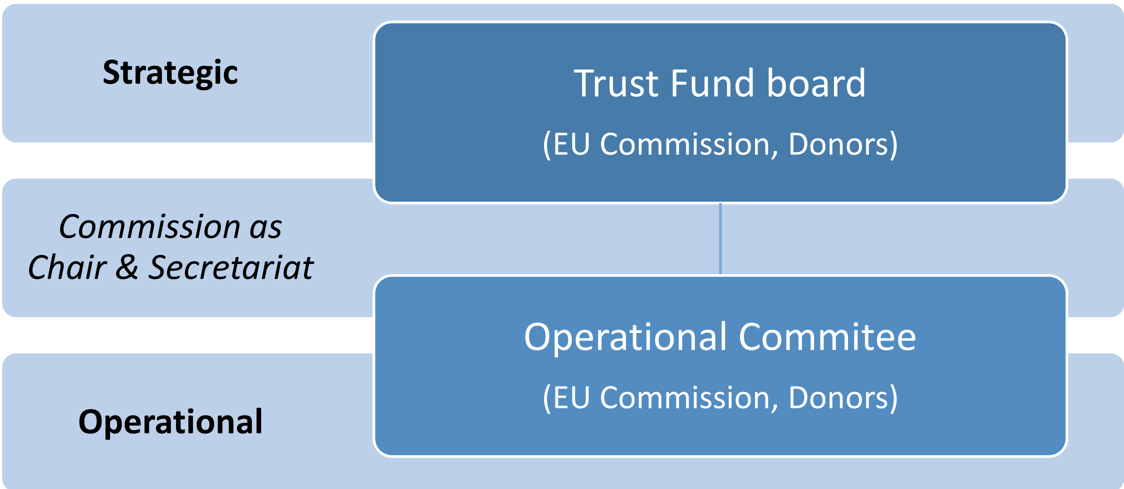
This section outlines the governance, management, monitoring and oversight procedures used by the trust funds. As the FRT is not trust fund, this section does not cover the FRT; nevertheless, internal budgetary rules apply (see more discussion in subsection 4.1.4). The EUTFs covered in this study do not all have identical characteristics, although their management procedures are very similar. It falls beyond the aim of this study to describe in detail all exceptions for the different trust funds or, for example, the regional windows of the EUTF for Africa.

At the basic level, an EUTF implies having a *trustee* (the Commission) and a *manager* (being the staff of the Commission). The EUTF is funded with *contributions* from the *donors*, including the EU itself, Member States and sometimes third countries. These contributions are kept in a separate bank account for the EUTF.

2.1 GOVERNANCE

The EUTFs work with a two-level governance structure: i) a strategic level and ii) an operational level, respectively translated organisationally into the Trust Fund Board and the Operational Committees (or an Operational *Board* in the case of the Madad EUTF for the Syrian Crisis). The Commission acts as the secretariat for these bodies and as the chair.

Figure 1. Governance structure model of EUTFs



At both levels, the EU and the donors (mostly the Member States) are represented. They are referred to as the trust fund members.[47] The trust fund members have voting rights, the Commission also has a veto right. The voting rights differ across the EUTFs, with the Bêkou EUTF according votes to the ratio of contributions made, but with the EUTF for Africa according one vote per donor.[48] In the EUTF for

[47] See e.g. Art. 5.1, Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

[48] See Art. 6.4.1, Agreement Establishing the European Union Trust Fund for the Central African Republic, 'the Bêkou EU Trust Fund', and Its Internal Rules ('Constitutive Agreement') between the European Commission and the Netherlands, Germany and France, Florence, 2014. See also Art. 6.5.1, Agreement Establishing the European Union Emergency Trust Fund for Stability

Colombia, also the Government of Colombia has a veto right as a partner of the EUTF. Interviews revealed that in the case of this fund, whereas the vote should be attributed to the ratios of contributions, de facto decisions are made by consensus among all donors without formal voting.[49] The Commission will be 'accompanied' by a representative from the European External Action Service, in the case of the EUTF for Colombia.[50]

Decisions can be taken with a simple majority, but consensus is preferred and practised. There are further entities with observer status, such as non-contributing Member States, third countries and international organisations. Their participation usually depends on the thematic or regional focus of the meeting. A good practice of observer status with regard to coordination with other donors is found in the Madad EUTF for the Syrian Crisis, where a permanent observer status is given to the UN-coordinated Syria Recovery Trust Fund.[51]

The EP does not have formal observer status as per the constitutive agreements, but is invited to Trust Fund board meetings (not to the Operational Committees). Even though the EP is in principle invited to board meetings, it has not always used this position proactively. It has not attended a number of Strategic Board meetings, such as for the Bêkou Trust Fund, the Colombia Trust Fund and the EUTF for Africa. This is reportedly due to agenda scheduling issues (e.g. overlap with Strasbourg weeks and planned on Fridays) and the fact that some of the meetings have taken place in Bogota and Bangui, for instance.

The Strategic Boards usually meet once a year and set the overall guidelines and objectives, such as at the beginning of the EUTF lifecycle in strategic orientation papers (or similar types of documents). Especially upon the establishment of a trust fund, the role of the Strategic Board is thus important as it formulates the intervention logic beyond the applicable constitutive agreement.

These strategic orientation papers usually sketch the existing challenges to be addressed by the trust fund, including sometimes at the country level. These documents, however, do not easily compare with programming as exercised under, for example, the EDF. The strategic orientation papers often remain fairly general and do not provide as much context or stakeholder consultation-informed analysis. Although the trust funds thus draw their contributions from existing EU funding instruments such as the DCI and the EDF, it is not evident that the lessons learned through the programming procedures under these existing instruments are structurally taken on board in setting the strategic objectives for the trust funds. Neither does the strategic document amount to a fully-fledged needs assessment. The ECA has also highlighted the absence a formal needs assessment in its recent Special Report on the Bêkou Trust Fund.[52]

It is in the Operational Committees that the decisions are made about the actual projects ('actions') to fund. These bodies can meet several times a year and are fed 'action fiches' or 'action documents' of proposed projects for approval. In practice, decisions are taken by consensus and the Commission never uses its veto power. Written procedures with 'tacit' consent are also possible at this level, but not

and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa, and Its Internal Rules ('Constitutive Agreement'), and Its Internal Rules between the European Commission and Spain, La Valetta, 2015.

[49] Interview Nos 21 and 22.

[50] See e.g. Art. 5.1.2, Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

[51] Art. 6.1.1(d), Agreement Establishing the European Union Regional Trust Fund in Response to the Syrian Crisis, op. cit.

[52] Paras. 21-27, ECA (2017a), op. cit.

often used.[53] The Operational Committees are not the stage or venue to actually engage in an in-depth discussion on the projects. The consensus on the projects to approve is usually reached before the meeting, through a series of informal talks and meetings. When an 'action fiche' is voted upon, the third country or region concerned is usually represented and will voice its opinion, although de facto that has also already been discussed and agreed with the country or regional organisation.[54]

This process entails that for a full understanding of the governance procedures under the trust funds, in fact more focus should be given to the stages preceding the Operational Committee meetings. The question is thus: How do project proposals arrive at the Operational Committee meetings in the form of action fiches? Constitutive agreements lack clarity on invitations to submit concept notes and their selection – this phase is not mentioned explicitly. Interviews revealed that in such a context certain ways of working have been developed by the EU delegations and Commission.[55]

A key role is foreseen for the EU delegations in the third countries involved (with the exception of the Madad Fund, since there is no EU delegation in Syria). The EU delegations in third countries are the main entry point through which project proposals can be submitted by participating Member States and their agencies (when it is implemented via delegated agreements), and also by international and other organisations. This remains a process of policy priority-setting, which depends on the amount of lobbying and informal contacts with the delegation. This is not a formalised process, as there is no open call for proposals at this point. The focus group with international and civil society organisations confirmed the interview findings that prior to submission applicants gather support and push for a specific project simultaneously at the EU delegation, European Commission and also among other Member States.

The role of the EU delegation is to provide a first scrutiny of potential projects. The constitutive agreements are not very detailed on this aspect and only provide basic rules on the eligibility of projects: namely that eligible projects should contribute to the objectives and purpose of the trust fund and its strategy, as well as that the projects should fall within the geographical scope of the trust fund.[56] These are merely *eligibility* criteria, not *selection* criteria. The vagueness of the eligibility criteria has led in certain funds to approve proper selection criteria. For example, the EUTF for Colombia eventually published a document that elaborates on the criteria and selection procedure.[57] The document outlines a list of strategic criteria for the concept notes to meet and subsequently, a list of technical criteria for the action documents against which they are to be assessed by the Operational Committee.

From the delegation level, the process is overtaken by the Commission Directorate-General level (DEVCO). Coordinated by the Commission, a quality support group or a similar group of EU expert officials examines the project proposals in light of their expertise. The point is to evaluate their quality and their expected cost-efficiency and added value. In the background, there is an ongoing negotiation between the Commission (different Directorates-General or sometimes involving a hierarchy), the Member States, the third country involved and sometimes the potential implementing partner. It is evident from the outcomes of the Operational Committees that 'package deals' are made with several

[53] See e.g. Art. 6(4)(4), Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

[54] Interview Nos 2, 3, 4, 7, 9, 10, 11 and 12, European Commission, October and November 2017.

[55] Interview Nos 1, 7 and 22, European Commission, October–December 2017; focus group with civil society, December, 2017.

[56] See e.g. Art. 9, Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

[57] European Commission, "Operational Criteria for the submission of proposals to the EU Trust Fund for Colombia", Brussels, May 2017(j) (https://ec.europa.eu/europeaid/operational-criteria-submission-proposals-eu-trust-fund-colombia_en).

projects approved together allowing for some give-and-take between the different actors involved. This rather organic process of project selection, sometimes without recourse to clear or fixed lists of evaluation criteria, allows a more strategic steering towards certain policy choices or priorities.[58]

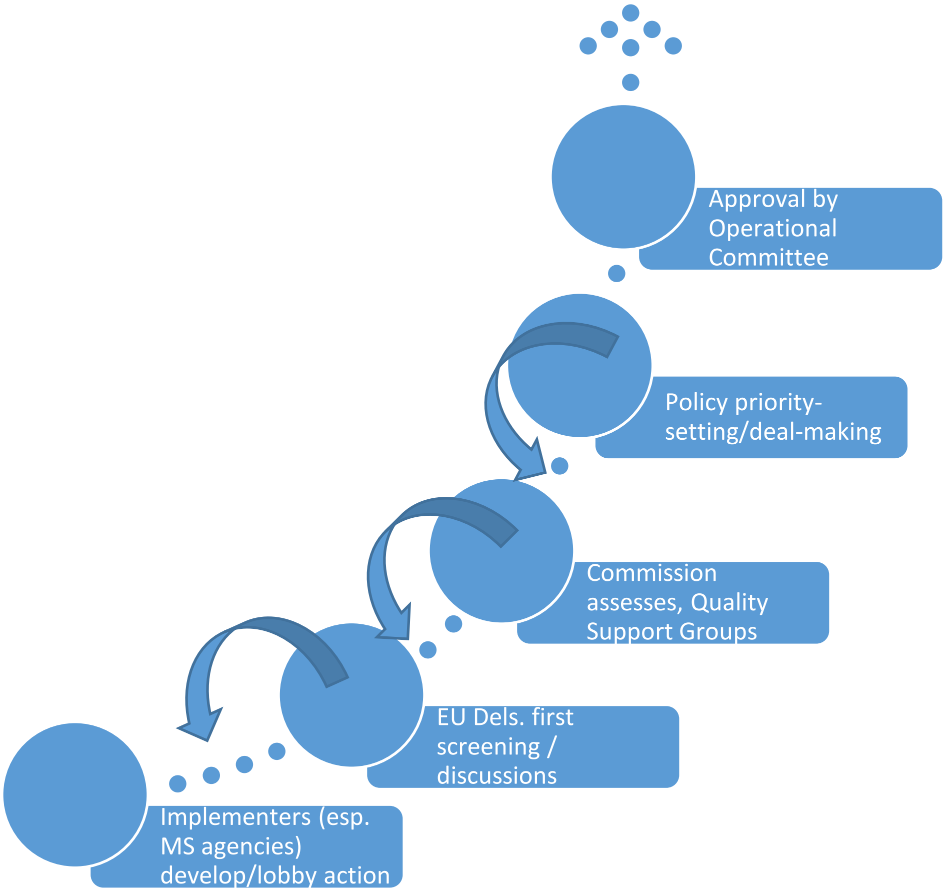
For example, in case of the EUTF for Africa, in particular the North Africa Window, the political prioritisation of 'curbing irregular migration' has thus resulted in certain projects aimed to strengthen the 'efficiency' and 'capacity' of border control agencies of third countries. For example, the North Africa window of the EUTF for Africa has funded the capacity building and technical support of the Libyan Coastguard.[59]

In addition, such a high level of flexibility makes the whole process quite opaque. Not only does it raise questions about transparency and accountability, but also from the outside it is not clear how that process works in practice. This is not the case with the regular external EU programmes, where selection procedures and criteria are well defined. For example, international partnership agreements, run by the Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) set out clear selection criteria in light of results to be achieved by the relevant project or programme, whether it is to be implemented by a government or civil society organisations.

[58] According to interviews, the use of selection grids at the pre-operational committee stage was limited: Interview Nos 4, 11 and 14, European Commission, October and November 2017.

[59] European Commission, "EU Trust Fund for Africa adopts EUR 46 million programme to support integrated migration and border management in Libya", Press Release, Brussels, 28 July 2017(k) (URL).

Figure 2. Project selection process used by EU trust funds



Source: Authors' compilation.

The Madad EUTF for the Syrian Crisis did at some point use a publicly available document entitled "Operational Criteria", which was supposed to provide some more clarity to potential applicants.[60] According to the Commission, this was de facto discontinued at some point as too many applications were received that were found to be insufficiently relevant to the Madad EUTF. There are current indications that this EUTF is to shift more from such an open entry point of projects to the general way of working under the EUTFs, namely also referring potential applicants increasingly to an EU delegation and/or Member States (agencies). Under that EUTF, there was also more common use of selection grids used by experts in Commission evaluation committees that assess the proposals that had surfaced.[61]

The often-perceived lack of clarity on selection procedures under the EUTFs, can discourage especially smaller non-governmental organisations (NGOs) from getting involved as implementing partners from the beginning. They may of course get involved again if an open call for proposals is launched at a later stage by the implementing organisation selected. Especially in the case of a Member State agency being the foreseen implementing partner, the dividing line between the Member State in its capacity as a donor deciding in the Operational Committee and the agency of that Member State is not always so clear. The EUTFs established to address emergency and post-emergency crises provide an option for

[60] European Commission, "Operational Criteria for A) Concept Notes/proposals Submitted to the Madad Fund Manager, and B) Action Documents Submitted to the Madad Fund Operational Board", Brussels, 2016(e).

[61] Interview No. 7, European Commission, November 2017.

delegated cooperation via delegation agreements.[62] In light of the explicit priority given to Member State-led implementation under a delegated agreement in the EUTFs' constitutive agreements (except the Madad EUTF for the Syrian Crisis), it is not surprising that many projects indeed end up being implemented by Member States and their agencies. This does give the impression that the decision-making procedures may not always safeguard a thorough and open-minded analysis, with all options on the table, of what is actually the most capable and cost-effective implementing organisation. During the interviews conducted for the purposes of this study, it was mentioned that the ratio of applications received and those granted is quite high, indicating that Operational Committees do not have many projects from which to choose.[63]

Alluding to this dynamic, the ECA highlighted in its recent report that a 'conflict of interest' could emerge in the Bêkou Trust Fund decision-making, especially where it concerns the contracting type and implementing organisation to be selected. Concretely, this related to the fact that Germany and France had appointed as representatives in the Operational Committees the implementing organisations, which would then be directly involved in the selection process itself.[64] Where the implementing organisation can de facto not be separated from the donor (trust fund member) approving projects under the EUTF, this is certainly a questionable situation. Interviews revealed that the Bêkou EUTF manager was in the process of raising this issue with the Member States concerned.[65] It could not be established whether this practice of potential implementing agencies as members of the Operational Committee was a general practice under EUTFs. At least one case appeared, under the Madad EUTF for the Syrian Crisis, where the KfW is represented (through its lead in the Syrian Recovery Trust Fund), although it apparently asked to abstain when action documents involving it are voted upon.[66]

The constitutive agreements actually allow for the appointment of agencies on the governance bodies of the EUTFs: the donor, e.g. a Member State, appoints a 'full representative' to act on the board and committee meetings. There is no specification concerning what type of representative can be appointed, thus in principle not precluding the appointment of implementing agencies.[67] Even where the Member State ministry and their implementing agency can be distinguished at an organisational or personal level, as is normally the case, this does not solve the inherent conflict of interest by design in the trust funds. For example, the in-built priority for delegated agreements with Member States leads to a certain dynamic of Member States pushing for 'their' projects and deal-making among them that is difficult to avoid.

The Commission assures that the EUTFs are in line with the regulations that govern the funding instruments from which the EUTF contributions are drawn. This appears to be the case indeed for many of the management aspects (see below), especially the more technical mechanics of the process. The governance, specifically of the selection process of projects and the implementing partner, is still quite

[62] According to Albert de Groot et al. in the report on "Evaluation of the EU aid delivery mechanism of delegated cooperation (2007-2014)", Ecorys, Rotterdam, November 2016 (URL), "[t]here are two main types of delegated cooperation, namely: Delegation Agreements (DAs): funds entrusted by the European Commission to development cooperation entities from EU Member States or other donors; and Transfer Agreements (TAs): funds entrusted to the Commission by EU Member States, other governments, organisations or public donors".

[63] Interview Nos 20 and 21, European Commission, December 2017.

[64] Interview Nos 14 and 15, European Commission, November 2017.

[65] Ibid.

[66] Interview No. 7, European Commission, November 2017.

[67] See e.g. Art. 6(1)(3), Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

different from how this would work under regular EU external funding instruments, e.g. the EDF or the DCI. There, the Member States act mostly through the comitology structures, where their voting rights are also different.

2.2 MANAGEMENT

As in any funding instrument, governance and management interact and overlap. As argued above, it is rather at the governance level that EUTFs distinguish themselves from regular EU external funding instruments. In management, the Commission in principle follows the normally applicable rules and regulations. Nonetheless, due to the often short deadlines for contracting and implementation, the flexibilities of these existing rules and regulations are sometimes pushed to their limits. For example, the Constitutive Agreement applicable to the Colombia EUTF states that "[g]iven the Trust Fund's objective in an emergency and post-emergency situation, flexible procedures appropriate to the local environment will be used to ensure that the fund is effective and responsive".[68]

Paradoxically however, in practice the setting-up of new governance and management working methods can mean that contract negotiations can take a long time, that new staff has to be hired at the delegation level and that new working relations have to be established with implementing partners.[69]

The central actor in the management is the Commission, in its roles as both a trust fund manager and an accounting officer. These roles are responsible for a number of management tasks, such as acting as a secretariat for the board and Operational Committee, for the sound financial management, implementing projects (although the extensive use of delegated agreements limits that role) and the preparation of the annual report. Importantly, the Commission is also in the end responsible for drafting the action documents, although of course keeping in mind the process of talks and deal-making as described in the previous section.[70]

To cover those management costs, the Commission can take 5% of the contributions to the trust fund.[71] As the report on the Bêkou Trust Fund by the ECA has found, it is not always clear what exactly is covered by that 5%.[72] In practice, it covers mostly contract agents hired by the Commission specifically for the trust fund, in both Brussels as well as the delegations. This excludes staff costs, for instance for permanent officials working on the trust fund for the Commission. In reality, the actual costs can thus be expected to be higher than the indicated 5%. As the ECA indicated, this is exacerbated by the rather frequent use of delegated agreements, inherently bringing further management costs and administrative fees into the picture.[73] It is thus not clear *prima facie* whether EUTFs ensure a more cost-effective management structure than other, regular EU external funding instruments. As this study is not an audit of any sort, we cannot definitely establish whether that is actually the case.

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[68] Art. 10, Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

[69] Evidence gathered from a focus group meeting with several IOs and NGOs representatives.

[70] See e.g. Art. 7, Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

[71] See e.g. Art. 7(3), ibid.

[72] ECA (2017a), op. cit.

[73] Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

The potential EUTF element of 'leveraging' contributions also is not *prima facie* clearly working: the Commission has had to make top-up contributions from the EDF/EU budget itself, as Member States' contributions are not as forthcoming as expected. This is especially the case for the EUTF for Africa.

The financial management includes a number of aspects, such as keeping the financial records, arranging bank accounts, putting in place internal control mechanisms, informing donors and drawing up the financial statements, as well as the annual accounts.[74] It is explicitly mentioned in the constitutive agreements that "the financial statements shall be drawn up in accordance with EU accounting rules". In that regard, there is thus no change in comparison with the Commission's regular way of working.

Just as for other EU external funding instruments, implementation can be done under different types of contracting, such as delegated cooperation agreements and direct awards, as well as open and restricted calls for proposals/expression of interest.[75] As highlighted above, the EUTF constitutive agreements give specific priority to delegated cooperation with Member States (or other trust fund donors). The EUTF for Africa Constitutive Agreement reads:

> *To avoid duplicating structures on the ground while making the best use of donors' expertise and ensuring European Union visibility, delegated cooperation with Member States shall be the preferred option of implementation where the principles of economy, efficiency and effectiveness can be clearly demonstrated. Delegated cooperation with other donors will also be considered.*

It should be noted that a similar clause was not included for the Madad EUTF for the Syrian Crisis, apparently because the Commission was not keen on it.[76] The Madad EUTF only mentions that approved actions "shall be implemented in accordance with the implementing modalities provided for in the applicable Commission rules and regulations".[77]

The underlying logic of giving priority to the Member States/donors of an EUTF can be understood from the perspective of incentivising Member States to contribute to an EUTF. Although it does not constitute a guarantee that donors will get their projects financed, and in practice that is certainly not always proven to be the case, it nonetheless creates a certain dynamic of expectations and motivates the pushing of national interests. This dynamic of Member States attempting to recover their contributions was clear in one instance in the Bêkou EUTF, where France received essentially its contribution amount in a project.[78] Moreover, there are several projects under the EUTFs where Member States have foreseen co-financing and where their implementing agency is also selected to implement.[79] The choice to co-finance and the selection of implementing partner should in principle not be tied up, as these processes should be governed by their own logics.

This overall dynamic gives rise to the question of whether the most appropriate and best available implementing partner is always selected, and whether the EU visibility is best ensured. This visibility is

[74] See e.g. Art. 8, Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

[75] Art. 8.3.4(e), ibid.

[76] Interview No. 7, European Commission, November 2017. The annex to the Constitutive Agreement does mention the Member States' agencies, but among other implementing partners.

[77] Art. 10, Agreement Establishing the European Union Regional Trust Fund in Response to the Syrian Crisis, op. cit.

[78] France contributed EUR 15 million to the Bêkou EUTF. The French Agency AFD was under delegated cooperation for the "PRESU" projects, for around the same value.

[79] See e.g. European Commission, Document D'action de Fonds Fiduciaire de l'UE À Utiliser Pour Les Decisions Du Comité Opérationnel – Coopération Sud-Sud En Matière de Migration, 2017(e).

one of the intrinsic aims of the EUTFs, but if projects too often become Member State projects, that EU visibility is potentially weakened. As this report is not an audit report, we cannot establish definitely whether visibility is in practice weakened at the project level, but we highlight that there are potential risks.

This dynamic of Member States pursuing their national interests, thereby potentially undermining EU added value and visibility, can also be observed under the regular external funding instruments (such as in the EDF Committee). The EUTF set-up exacerbates this dynamic, especially through the explicit priority given to delegated cooperation agreements with Member States (agencies) as well as through the absence of actual programming, making the whole process less prescribed by preset objectives. As described above, the Constitutive Agreement for the Madad EUTF for the Syrian Crisis provides an exception and, we argue, a promising practice, as it refrains from giving priority to delegated cooperation with Member States and their agencies.

2.3 DEMOCRATIC ACCOUNTABILITY DEFICITS AND EP OVERSIGHT

The European Parliament has limited possibilities to carry out oversight over the trust funds, but still has some opportunities to ensure democratic accountability. This section describes the points in the lifecycle of the EUTFs at which the EP can intervene. It is based on the EU accountability literature, which distinguishes between *ex ante*, ongoing and *ex post* phases of accountability venues.[80] The burgeoning academic literature on the accountability of semi-autonomous structures under the EU institutional and legal framework is also taken as inspiration here.[81]

2.3.1 *Ex ante* accountability

As explained above, at the establishment (when authorising the Commission to sign the constitutive agreement) and when the EU contributions are decided to be transferred to the EUTFs, there is the opportunity for the Parliament under comitology to scrutinise the Commission implementing decisions (except where EDF is involved). This constitutes a form of *ex ante* democratic accountability as the EP can adopt a resolution, although that is non-binding and can only invoke *ultra vires* grounds. The EP can thus not legally force a change to the objectives or scope of an EUTF. As such, the EP is not currently part of the establishment procedures, let alone that it would have an explicit right of consent. However, politically it could certainly send a strong signal, should the EP raise its voice under the comitology procedures and adopt a resolution. So far, the EP has not adopted a resolution, but is getting increasingly involved in *ex ante* monitoring. For example, the EP has carefully assessed the Commission Implementing Decision concerning the DCI contribution to the EUTF for Africa.[82]

In general, the EP can ensure a low level of democratic *ex ante* accountability over EUTFs in comparison with the *ex ante* accountability over existing EU external funding instruments, such as the DCI, ENI or Instrument for Pre-Accession Assistance II. The EUTFs draw from these existing EU external funding

[80] Mark Bovens, "Analysing and Assessing Accountability: A Conceptual Framework", *European Law Journal*, Vol. 13, No. 4, 2007; Sergio Carrera, Leonhard den Hertog and Joanna Parkin, "The Peculiar Nature of EU Home Affairs Agencies in Migration Control: Beyond Accountability versus Autonomy?", *European Journal of Migration and Law*, Vol. 15, No. 4, 2013, pp. 337–58; Elena Madalina Busuioc, *The Accountability of European Agencies: Legal Provisions and Ongoing Practices*, Delft: Eburon, 2010.

[81] Deirdre Curtin, "Holding (Quasi-)Autonomous EU Administrative Actors to Public Account", *European Law Journal*, Vol. 13, No. 4, 2007, pp. 523–41.

[82] Interview Nos 9 and 10, European Commission, November 2017.

instruments that fall under the EU budget (with the notable exception of the EDF). These existing instruments are subject to the Multiannual Financial Framework negotiations generally and subject to negotiations at the instrument level. In these processes, the EP is fully involved in setting the amounts and priorities as it co-legislates on the funding instrument regulations, such as for the DCI.[83]

The EDF constitutes a particular case, as an extra-budgetary instrument, producing certain impacts on the EUTFs and their democratic accountability. For example, the fact of the matter is that the EUTF for Africa subsequently also draws into its EDF-established nature EU instruments normally falling within the EU budget, such as the DCI. This results in a situation where DCI contributions (i.e. EU budget contributions) land in an already shaped strategic and operational context that was set up outside the EU budget (and outside comitology proper). This may be unavoidable under the current framework, where the EUTF for Africa draws primarily from the EDF, and is hence logically set up on the basis of the EDF and through its Committee. This EUTF for Africa practice could, however, be further impetus for considering the 'budgetisation' of the EDF,[84] as it would address this issue.

Certainly, the EP approved the new Financial Regulation and thereby the possibility for the Commission to set up EUTFs. Yet in light of the rapid and extensive use of EUTFs over the past years, it could be time to reconsider the procedures necessary to establish an EUTF. Especially the setting-up of the EUTF for Africa raises the question of whether it is in line with the principle of institutional balance[85] that this type of large multi-country EUTF, partly dominating the policy and funding discussions with Africa, should only pass through a Commission decision in the EDF Committee. We argue that this goes against the spirit of the Lisbon Treaty and its promise of bringing more coherence and democratic accountability to the EU.

Some argue that similar losses of EP oversight materialise when the EU contributes to non-EU trust funds, such as those run by the UN or the World Bank, therefore not posing a new problem to be addressed in the context of the EUTFs.[86] Albeit factually correct, this cannot figure as a valid argument explaining the democratic state of affairs of the EUTFs, as they fall within the EU institutional and legal structure. Clearly the EUTFs are EU instruments, and as such cannot be compared with extra-EU instruments. The EUTFs concern instruments that, although formally outside the EU budget and managed through separate bank accounts, form EU funding instruments. Hence, discussions on their democratic oversight should be situated in the EU context and should be held in reference to EU developed norms on democratic accountability. This includes basic principles included in the Treaties and those in the Charter of Fundamental Rights. Any other context of discussion would open the door to a disintegration of the EU institutional and legal structure and of the EU budget.

2.3.2 'Ongoing' accountability

'Ongoing' accountability refers to those venues where accountability mechanisms can be exercised between the *ex ante* and *ex post* phases, i.e. when the exercise of executive competences is ongoing. In this study's context, this refers to the accountability of the ongoing governance and management

[83] See Regulation (EU) No. 233/2014 of the European Parliament and of the Council of 11 March 2014 Establishing a Financing Instrument for Development Cooperation for the Period 2014-2020, OJ L 77/44, 15.3.2014.

[84] For an EP resolution mentioning this, see European Parliament, Committee on Development (DEVE), "Report on the EU Trust Fund for Africa: The Implications for Development and Humanitarian Aid" (2015/2342(INI)), Strasbourg, 2016, para. 7.

[85] See Jean-Paul Jacque, "The Principle of Institutional Balance", *Common Market Law Review*, Vol. 41, No. 2, 2004, pp. 383–91.

[86] Interview No. 4, European Commission, October 2017.

activities of the EUTFs, such as decision-making by the boards and Operational Committees. In this ongoing phase, there is a risk of undermining the autonomy of the exercise of competence by the executive actor. This means that ongoing accountability should in principle be in balance with that autonomy, although clearly taking into account the potential risk that in the ongoing phase any irreparable damage could be done that cannot be remedied *ex post*.

As revealed through our interviews, the EP is or will be invited as a de facto observer to the board meetings of the EUTFs. It does not have formal observer status under the constitutive agreements. The invitation to the EP to participate in the board meetings is a positive step towards including its democratic perspective. As mentioned above, the EP has not, however, always used this right to participate as an observer at the board meetings, which can be understood practically owing to difficult scheduling reasons (e.g. the EP's 'Strasbourg' week and the usual unavailability on Fridays, or the board meeting was held in Bogota in one case relating to the EUTF for Colombia). The EP has recently become more proactive on this front. Several EP committees (namely the Committees on Budgets, on Development Cooperation and on Foreign Affairs) sent a joint letter on 13 June 2017 with respect to involvement on Strategic Boards. The EP requested that the relevant EP committee chairs be invited to each strategic committee meeting (see Table 2).

Table 2. EP Committee involvement in *ongoing* monitoring of EU trust funds and the Facility for Refugees in Turkey

INSTRUMENT/MECHANISM	RELEVANT EP COMMITTEE TO BE INVITED
EU Trust Fund for Colombia [a)]	**BUDG, AFET & DEVE**
EU Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa [b)]	**BUDG & DEVE**
Facility for Refugees in Turkey [c)]	**BUDG & AFET**
EU Trust Fund in Response to the Syrian Crisis – the 'Madad' Trust Fund [d)]	**BUDG & AFET**
The EU Trust Fund for the Central African Republic – the 'Bêkou' Trust Fund [e)]	**BUDG & DEVE**

Notes: AFET = Committee on Foreign Affairs; BUDG = Committee on Budgets; DEVE = Committee on Development Cooperation.

[a)] Agreement Establishing the European Union Trust Fund for Colombia, and Its Internal Rules ('Constitutive Agreement') between the European Commission and Member State Donors, Brussels, 2016.

[b)] Agreement Establishing the European Union Emergency Trust Fund for Stability and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa ('Constitutive Agreement'), and Its Internal Rules between the European Commission and Spain, La Valetta, 2015.

[c)] Commission Decision of 24 November 2015 on the coordination of the actions of the Union and of the Member States through a Coordination Mechanism – the Refugee Facility for Turkey – C(2015) 9500 Final, Strasbourg.

[d)] Agreement Establishing the European Union Regional Trust Fund in Response to the Syrian Crisis, 'the Madad Fund', and Its Internal Rules ('Constitutive Agreement') between the Directorate-General for Development Cooperation and the Italian Ministry of Foreign Affairs and International Development, Ref. Ares(2016)1329575 (Updated Version), Brussels, 2016.

[e)] Agreement Establishing the European Union Trust Fund for the Central African Republic, 'the Bêkou EU Trust Fund', and Its Internal Rules ('Constitutive Agreement') between the European Commission and the Netherlands, Germany and France, Florence, 2014.

Source: Authors' compilation.

Although participation in the board meetings is certainly useful, the boards' discussions remain at the strategic and general level. The EP's input at that level can bring more democratic legitimacy to the debates about the general focus and priority of an EUTF.

However, the decisions relating to what actions will be financed are taken in the Operational Committees. In the Operational Committees, the EP is not represented, because the EP is not part of the 'executive' branch.[87] This is where the main problem in comparison with the normal EU funding decision-making structures surfaces (again, except for the EDF). For example, under the DCI, the action fiches or annual action plans are approved as Commission implementing decisions in the DCI Committee under comitology (Art. 291 TFEU). Here, the Member States will give their favourable opinion (or not), and the Council and EP have their scrutiny rights. As explained, this scrutiny right is limited in scope (*ultra vires*) and is non-binding. Still, it provides the EP with an important tool to remain informed (right of information) and to make a statement (right of scrutiny) if it deems that the Commission has overstepped its implementing powers. A similar tool does not exist for the Operational Committees of the EUTFs.

Interviews revealed that at least for the Madad EUTF for the Syrian Crisis, the minutes of the Operational Committee (or Operational Board in the Madad EUTF) will also be shared with the Trust Fund Board members, including its newly appointed EP representative (MEP Marietje Schaake, ALDE).[88] This did not appear to be standard procedure in the other EUTFs, but could be regarded as a 'promising practice'. Another discussed option is to grant the EP observer status in the Operational Committees. This would ensure democratic accountability, but also may have some downsides regarding the degree of autonomy of the exercise of executive powers by the European Commission. In any case, proactively sharing the documents (especially action documents) and the outcomes (minutes) of the Operational Committees with the EP, giving it a certain timeframe for scrutiny, should be perfectly feasible without disproportionately harming the autonomy of the exercise of executive powers. The EUTF constitutive agreements also prescribe that representatives of EU institutions may have access to all documents and information.[89]

This is even more so the case given that once actions are approved by the Operational Committees, they can in principle not be reversed, while they may have impacts on the EU's external relations priorities, objectives and values as outlined in Art. 21 of the Treaty of the European Union. In light of the important actions financed, with their potentially irreversible impacts, a form of ongoing democratic oversight is justified. The most straightforward solution would perhaps be to simply replicate the EP's comitology rights of information and of scrutiny under the EUTFs. It would not alter fundamentally the envisaged possibilities for the pooling of resources and the added value of the EUTFs, but would enable the EP to remain fully informed and to give its opinion on specific actions if it deems necessary.

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[87] Interview Nos 9 and 10, European Commission, November 2017.

[88] Interview No. 7, European Commission, November 2017.

[89] See e.g. Art. 11(4)(1), Agreement Establishing the European Union Trust Fund for Colombia, op. cit.

2.3.3 *Ex post* accountability

The EP has several ways to exercise *ex post* democratic accountability over the EUTFs. *Ex post* not only refers to after the EUTFs' life span, but also to after the execution of governance and management under the EUTFs. Hence it also covers, for example, annual reporting and opportunities for posing parliamentary questions and organising hearings.

The EP is informed of the EUTFs' progress through various reports issued by the Commission. Most importantly, the EP receives the annual accounts and the annual reports of the EUTFs.[90] The annual report contains important information about the state of implementation under the EUTF, including project-level data.[91] Moreover, the EP can pose questions to the Commission, as it does regularly, including on the EUTFs. This is an important horizontal tool for the EP to obtain information on the EUTFs' implementation so far and often provides useful insights. For example, on 4 December 2017 the EP Committee on Budgetary Control had a hearing at which DG DEVCO representative Mr Stefano Manservisi was asked about the financial implementation of the EUTFs.[92] In addition, the EP, in coordination with the Commission, can undertake field visits. During interviews with the European Commission, the researchers learned that some field visits were planned in 2018 to oversee the EUTF for Africa.[93]

The discharge procedure constitutes the main *ex post* budgetary control procedure in which the EP is involved. In light of some of the challenges to *ex ante* and ongoing accountability mechanisms for the EP related to the EUTFs, this discharge procedure is a crucial tool for the EP to scrutinise the Commission's management of the EUTFs. It goes beyond the scope of this study to describe in detail the discharge procedure, but some features that could be relevant for the oversight of the EUTF are given here.[94] The discharge procedure is of course not specific to the EUTFs, but relates to the overall EU budget implemented by the EU institutions, in this case the Commission, including its management of the EDF (under a separate discharge procedure).[95] Linked to this, the ECA is involved in its capacity of providing the statement of assurance. Special reports produced by the ECA, such as on the Bêkou EUTF, are also taken into account under a specific procedure on "ECA Special Reports in the context of 2016 Discharge to the Commission", for which the EP has its own (shadow) rapporteurs.[96] The EP normally grants a discharge to the Commission,[97] but the procedure itself provides opportunities for the EP to pose questions and obtain information on the implementation of the budget by the Commission. The Commission also has a legal obligation to address the EP's observations.[98] Therefore, general discharge procedures with respect to the Commission and EDF and in particular, the procedure

[90] See e.g. Art. 11(4)(3), Agreement Establishing the European Union Regional Trust Fund in Response to the Syrian Crisis, op. cit.

[91] See e.g. European Commission, "2016 Annual Report – The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa", Brussels, 2017(b).

[92] See the video of the EP Committee on Budgetary Control meeting on the 4th of December with the Director-General of DG DEVCO, Mr Stefano Manservisi http://web.ep.streamovations.be/index.php/event/stream/171204-1500-committee-cont .

[93] Interview Nos 11 and 12, European Commission, November 2017.

[94] See more in detail http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/581968/EPRS_BRI%282016%29581968_EN.pdf.

[95] Arts 48-50, Regulation No. 2015/323, op. cit.

[96] For the latest overview, see

http://www.europarl.europa.eu/cmsdata/130200/2017-10-18_Rapporteurs_Shadow%20Rapporteurs_2016%20Discharge.pdf.

[97] The last time the EP refused the discharge to the Commission was in 1998.

[98] See Art. 319 TFEU and Art. 166 of the Financial Regulation (No. 966/2012).

linked to the ECA special reports on EUTFs, could be better explored to inject more *ex post* democratic accountability.

The most radical *ex post* mechanism for democratic oversight concerns the possibility for the EP to request the discontinuation of an EUTF. The Financial Regulation defines this as follows:

> *The European Parliament and/or the Council may request the Commission to discontinue appropriations for that trust fund or to revise the constitutive act with a view to the liquidation of the trust fund, where appropriate. In such an event, any remaining funds shall be returned on a pro rata basis to the budget as general revenue and to the contributing Member States and other donors.*[99]

Although politically such an EP request would most likely mean that the Commission has no other choice but to discontinue an EUTF, legally this text of the Financial Regulation opens a number of questions. The word “request” could also suggest that this request is to be decided upon by the Commission, and could thus theoretically be rejected. Yet this would seem quite unlikely as it would defy the very purpose of the EP’s right to request the discontinuation of appropriations or the liquidation of the EUTF. It is also not 100% clear what the words “where appropriate” refer to precisely. It could refer to the request itself, or to the choice between the discontinuation of appropriations or revising the constitutive agreement to liquidate the EUTF. If “where appropriate” refers to the request itself, that would beg the question of who has the final word on that appropriateness, the EP or the Commission. The confusion may be exacerbated by the text of some constitutive agreements of some EUTFs, which indeed apply the appropriateness condition to the request itself.[100] This would possibly open the (legal) door over questioning whether a request is ‘appropriate’. That notwithstanding, the opening of the second sentence “[i]n such an event” seems to imply that after the European Parliament and/or Council may make such a request the consequence will directly be that any remaining funds shall be returned to the budget. Should the EP and/or Council submit such as request, the Commission would have the obligation to follow. In addition, the constitutive agreements clearly refer to the request by the Council and/or Parliament for a “termination event”.[101]

2.4 OTHER FORMS OF MONITORING AND FINANCIAL OVERSIGHT

In principle, the regular forms of monitoring and oversight that exist under the EU Financial Regulation and its Rules of Application apply to the EUTFs. It is beyond the scope of this study to give an exhaustive list of possible monitoring and oversight mechanisms. A brief overview is given, after which we focus more in detail on the results-monitoring frameworks of the different EUTFs and the FRT.

External audits are carried out annually and regular reporting mechanisms apply. Moreover, the Commission’s internal audit service is also competent to examine the EUTFs.[102] The EU Anti-Fraud Office also exercises the same powers over the EUTFs as it does generally over Commission activities.[103] Some of the discussed EUTFs and the FRT have furthermore contracted private service contractors to

[99] Art. 187(5), 2nd para., ibid.

[100] See e.g. Art. 17(2)(2), Agreement Establishing the European Union Emergency Trust Fund for Stability and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa, op. cit., clearly relocating and inserting the words “where appropriate” after the mention of the request itself.

[101] See e.g. Art. 17(2)(c), ibid.

[102] Art. 187(6), Regulation No. 966/2012, op. cit.

[103] See e.g. Art. 11(1), Agreement Establishing the European Union Emergency Trust Fund for Stability and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa, op. cit.

carry out monitoring and evaluation activities, such as those linked to their results-monitoring frameworks discussed below.[104]

As mentioned above, the ECA may also decide to carry out an audit of an EUTF, as it has done with the Bêkou EUTF Special Report. The ECA will finish two special reports in 2018 that are relevant to this study, namely on the EU Trust Fund for Africa and the FRT, as indicated in its 2018 Work Plan. It has placed these reports under its 'high priority' category. For the FRT, the ECA will assess "the performance of the FRT system and projects". For the EU Trust Fund for Africa, the ECA will assess "if the Commission designed and operated the EU Trust Fund for Africa well and whether it achieved its objectives" and "whether the EUTF added value to the EU response to migration, integration and security challenges".[105]

It should also be mentioned specifically that entities that carry out indirect management, such as the Member State development agencies or IOs under the EUTFs, are 'pillar assessed' by DG DEVCO prior to contracting. This implies an assessment of their internal checks, accounting and independent external audits. A number of further checks are in place during the implementation phase. Nonetheless, the DEVCO Annual Activity Report shows that indirect management with IOs and development agencies did have a high risk.[106]

2.4.1 Results-monitoring frameworks

The EU has set up the EU International Cooperation and Development Results Framework (EURF) in order to enhance DG DEVCO's capacity to monitor the results of EU development actions, while improving accountability and transparency.[107] The EURF lists a set of indicators structured on three levels. *Level 1* indicators are used to measure the partner country's overall development progress arising from the collective action of all development operators. *Level 2* instead looks only at the results that can be link specifically to EU development actions, by using indicators that account for the overall contribution that the EU brings to the development progress of a country. *Level 3* indicators are used to assess the performance of the European Commission in managing EU resources to meet development goals.[108]

The EURF applies to all projects funded by DG DEVCO's instruments for external action,[109] including the Bêkou Trust Fund for the Central African Republic, the EU Emergency Trust Fund for Africa (only the Horn of Africa, and Sahel and Lake Chad windows), and the EUTF for Colombia. In addition to the general framework of DG DEVCO, trust funds can establish their own individual results frameworks, which are described below.

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[104] See e.g. the overview of project for the FRT, where a EUR 14.3 million project is foreseen with various implementing partners for a "Support Measure to ensure tracking and measuring results, verification of the proper use of funds, and communication on the implementation of funded interventions".

[105] ECA, "2018 Work Programme", Luxembourg, 2017(b), p. 5.

[106] See for this and an overview of further checks in place, section 2.1.1, European Commission (2017a).

[107] European Commission, "Launching the EU International Cooperation and Development Results Framework", Staff Working Document, SWD(2015) 80 final, Brussels, 2015(c), 2.

[108] For the exhaustive list of indicators, please refer to www.europa.eu/capacity4dev/eu-rfi.

[109] The Development Cooperation Instrument, European Development Fund, European Instrument for Democracy and Human Rights, Instrument contributing to Stability and Peace (for the component "Global threats" only), Instrument for Nuclear Safety Cooperation, Instrument for Greenland and their predecessor instruments covering the programming period 2007–13 (European Commission, 2015 (c), pp. 3-4).

The EU Emergency Trust Fund for Africa

This trust fund has developed a results framework that is common to all the windows. For each area of intervention, the framework lists concrete indicators to measure the expected results, while suggesting the data needed to verify the outcomes. For example, to measure the expected result of increased economic productivity the indicator is the "number of small enterprises by locality, sector (including numbers of them created by women, different age groups)", which is to be measured with data collected through the implemented projects of the trust fund.[110]

Projects are monitored internally by the project managers and the implementing organisations, through day-to-day control and eventual project reviews. Additionally, in the context of the EU Results-Oriented Monitoring system, external professionals assess programme implementation through project visits and provide recommendations.[111]

EU Regional Trust Fund in Response to the Syrian Crisis (the Madad Fund)

The results framework established by the Madad Fund has the same structure as the EU Emergency Trust Fund for Africa, as it allocates indicators to each expected result and specifies which data are to be used. For example, to measure the improvement of municipal water infrastructure, the indicator is the number of operational facilities that were rehabilitated or built.[112] In addition, from November 2017 a new monitoring system will assess results on a quarterly basis and provide an online platform to follow implementation and reporting progress.[113]

The EU Facility for Refugees in Turkey

The FRT discussed its own results framework in 2017, in order to measure the achievements of the funded actions and to report progress in a consistent manner. The framework identifies indicators to compare actual performance with expected results at both the project and Facility levels. An online platform for monitoring activities is also foreseen.[114] As mentioned in the Facility's first annual report, the results framework was expected to be finalised in March 2017. However, at the time of writing the creation of a comprehensive results framework was still an ongoing process, also carried out by external contractors assisting the Commission. The upcoming results framework is supposed to comprehensively track the progress of projects. One challenge thereby remains the input of information from Turkish governmental entities, which do not always proactively support the functioning of such a framework for monitoring results.[115]

The EU Trust Fund for the Central African Republic (the Bêkou Trust Fund)

The Bêkou Trust Fund does not have a results framework in place and has not created concrete benchmarks at the trust fund level that can be used to compare performance with expected results. While some projects have their own results frameworks, they are not included in a comprehensive

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[110] The Results Framework can be downloaded from DG DEVCO's website https://ec.europa.eu/europeaid/eu-emergency-trust-fund-africa-results-framework_en.

[111] European Commission, "2016 Annual Report – The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa", Brussels, 2017(b), p. 16.

[112] The Results Framework can be downloaded from the trust fund's website.

[113] European Parliament, "Written Questions to Commissioner Mimica, Hearing on 12 October 2017", Brussels, 2017, p. 32.

[114] European Commission, "First Annual Report on the Facility for Refugees in Turkey", COM(2017) 130, Brussels, 2017(d), pp. 13-14.

[115] Interview No. 5, European Commission, November 2017.

framework.[116] Nonetheless, since the trust fund is managed by DG DEVCO, the general guidelines of the EU results framework described at the beginning of this section apply. For the future, the European Commission envisages the creation of a results framework at the trust fund level, which would probably take the form of an agglomeration of the variety of project frameworks.[117]

EU Trust Fund for Colombia

The recently established EUTF for Colombia has not yet created its own results framework. Still, the Constitutive Agreement for Colombia mandates that each project is in charge of setting up indicators to measure performance. As the trust fund is managed by DG DEVCO, the EU results framework applies. Although DG DEVCO has general guidelines for a results-monitoring framework, EUTFs and the FRT have shown the intention to create their own specific frameworks, using different apps, websites and documents. For the EUTF for Africa, different windows have even established their own monitoring frameworks. The EUTF for Africa and the FRT are in advanced stages of developing a results-monitoring framework and the Madad EUTF is also putting a framework in place, while this is not (yet) the case for the Bêkou Fund or the EUTF for Colombia.

One shortcoming that has arisen during interviews is that the officials who work for different EUTFs (and the FRT) are not always well aware of the practices implemented by their colleagues.[118] More communication and cooperation across the trust funds (and the FRT) may be helpful for those who have not yet created a results-monitoring framework, or aim at improving their own. More crosscutting drawing of useful insights could be achieved.

[116] ECA (2017a), op. cit., pp. 26-27.

[117] Interview Nos 14 and 15, European Commission, November 2017.

[118] Interview Nos 4, 5, 7, 10, 11, 12, 14 and 15, European Commission, October and November 2017.

3. NATIONAL AND INTERNATIONAL 'PROMISING PRACTICES'

3.1 INTRODUCTION

The introduction of the Millennium Development Goals and the adoption of the Paris Declaration on 'aid effectiveness' have stimulated the debate and catalysed major transformations in the context of international development and humanitarian aid. Besides the official development assistance, which is established on the basis of governments' bilateral agreements, more concerted initiatives have been emerging and influencing humanitarian and development activities.

In particular, multi-donor trust funds are financial agreements channelled by national or international organisations that pool together voluntary contributions from different donors. A multi-donor trust fund stands upon the principle that in case of emergency, the duplication of aid initiatives reduces the level of effectiveness of humanitarian and development actions (Paris Declaration, 2005). Accordingly, over time multi-donor trust funds have been increasing in number and size, contributing to address, at least partially, the problem of the fragmentation of international aid.

In this context, international development organisations (IDOs), such as the World Bank and the UN together with other regional development agencies, have been playing a major role. Indeed, channelling the resources dedicated to humanitarian and development activities through specialised IDOs presents a number of advantages. First, IDO trust funds offer a common platform for donors. This makes it easier to reach a critical mass and to maximise the impact of aid initiatives. Second, the developed expertise of IDOs in setting up and managing multi-donor trust funds enable donors to rely on a well-oiled machine. This is particularly important when it comes to defining governance structures, contract frameworks and monitoring requirements, as well as audit standards.

The World Bank and the United Nations are by far the most important organisations in the context of multi-donor trust funds. Even the EU, which has its own multi-donor trust funds, channels large amounts of funding through the multi-donor funds administered by the UN and World Bank. Indeed, of the EUR 4.7 billion that the EU budget gives to multi-donor funds, 53% is given to World Bank-administered funds and 34% to UN-administered funds.[119]

The increasing number of trust funds set up by the EU over the last four years may suggest a change in the European Commission's strategy vis-à-vis the EU aid policy. In this regard, the visibility issue and high management fees have often been mentioned during the interviews performed for this study as two prominent reasons behind such a shift. Nevertheless, a comprehensive analysis of what has driven such a change lays beyond the scope of this study. At the same time, building upon the experience of IDOs would be good to strengthen the ability of the EU to deliver in developing countries.

Leading from these considerations, this section aims at identifying trust fund 'promising practices' by exploring the use of such instruments by international and national actors. In particular, the analysis will exclusively focus on the governance structure of trust funds, the set-up procedure and the accountability and results-monitoring frameworks. The section is structured as follows: section 3.2 reviews multi-donor trust funds managed by the UN and the World Bank Group; section 3.3 examines

[119] Authors' calculation based on European Commission, "Information note on multidonor trust funds supported by the European Union", Brussels, 2016(d), p. 2. The complete list of TF supported by the EU can be found in Annexes IV and V of the study cited in this footnote.

EU Member States and third countries; section 3.4 explores the EU blending instruments; and section 3.5 compares the findings from above-mentioned reviews with the EUTFs.

3.2 UN AND INTERNATIONAL FINANCIAL INSTRUMENTS

3.2.1 United Nations

The UN system uses various types of international financial instruments, such as multi-donor trust funds to pool funding from UN agencies and external contributors and to finance development activities in a more effective and coordinated way. More than 95% of the UN multi-donor trust funds are managed by the Multi-Partner Trust Fund (MPTF) Office, for a cumulative value of approximately $10 billion since 2006.[120]

The creation of a new multi-donor trust fund is discussed and evaluated by stakeholders including UN agencies, potential donors and national governments. In this phase, an assessment of priorities and costs related to the new instrument is followed by a review of the existing funds, in order to avoid duplication. During consultations, a concept note is prepared, laying out the goals, the management structure of the multi-donor trust fund, as well as the potential contribution from interested donors. Once stakeholders decide to establish the multi-donor trust fund, an administrative agent is formally selected by the participating UN agencies. The trust fund's terms of reference are finalised and the legal agreements are signed by the partners (a memorandum of understanding between participating UN agencies and the administrative agent, and a standard administrative agreement between donors and the administrative agent).[121]

The decision to set up a multi-donor trust fund takes into consideration whether the potential fund's function would bring added value. The MPTF Office identifies six functions that a multi-donor trust fund can perform: a) support policy and project coherence; b) consolidate development action by reducing fragmentation; c) provide targeted and specialised expertise on a particular issue; d) manage and reduce risk of governments and donors; e) enhance the capacity of national systems; f) provide access to innovative and transparent funding.[122]

Although multi-donor trust funds are not required to follow a one-size-fits-all template, a standard governance architecture exists (see Figure 3). Donors transfer contributions to the administrative agent, which is in charge of managing and transferring them to the project implementing organisations (e.g. UN and government agencies and NGOs). An administrative agent signs legal agreements with donors and implementing organisations, evaluates the performance of the trust fund and provides financial reports. Disbursements by the administrative agent must be approved by a steering committee, which decides the trust fund's strategy, allocates resources and monitors progress. The steering committee includes representatives of the government of the country of concern where

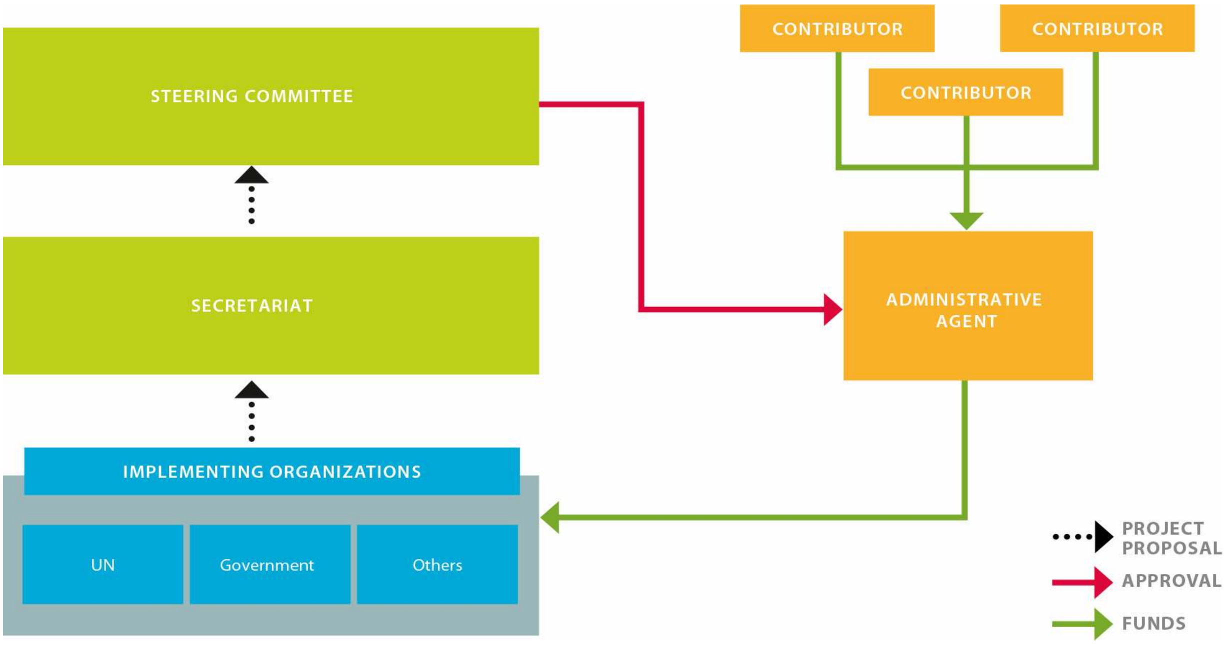
[120] See Dawn Del Rio and Yannick Glemarec, *Financing development together: The role of pooled financing mechanisms in enhancing development effectiveness*, Multi-Partner Trust Fund Office, United Nations Development Programme, New York, NY, p. 1; see also MPTF Office, "2016 Annual Report UN Multi-Partner Trust Fund Office" United Nations, New York, NY, 2016, p. 3.

[121] UN Development Group, "UNDG Guidance on Establishing, Managing and Closing Multi-Donor Trust Funds", New York, NY, 2015, pp. 11-13.

[122] Yannick Glemarec et al., "Designing Pooled Funds for Performance, a manual prepared by the Multi-Partner Trust Fund Office", United Nations, New York, NY, 2015, p. vii.

the projects are implemented, the donors and the implementing organisations, and it is supported by the secretariat. The latter is in charge of monitoring, evaluation and coordination of projects, as well as day-to-day operations.

Figure 3. Fund governance architecture



Source: Glemarec et al. (2015), p. vii.

UN trust fund operations are ruled by a single audit principle, which states that the administration of trust funds and the implementation of projects are audited both internally and externally. In particular, donors are not allowed to request additional external audits.[123]

The MPTF Office has an online platform[124] called the "MPTF Office Gateway", where the public can access information about all the multi-donor trust funds and joint programmes in which the MPTF Office is involved. Each trust fund has its own page where exhaustive data about contributions, disbursements and donors is updated in real time. Additionally, the governance structure, the strategy and other relevant information is displayed, together with links to publications. Information listed in the Gateway concerns mostly financial and structural matters. Monitoring and assessment of results are published in separate reports by individual trust funds.

According to UN guidelines, an effective trust fund design is one that translates the fund's goals into concrete results on three levels.[125] First, the long-term impact that the fund is expected to have on a group of people, which can be measured against an indicator every three to five years. Second, the fund's outcome, or change caused by its activities, which is reached through the contributions of all funded projects. Third, the fund outputs that are easily measured, for example, in terms of changes in

[123] Istvan Posta and Cihan Terzi, "Policies and procedures for the Administration of trust Funds in the United Nations System Organizations", United Nations, Geneva, 2010, p. 26.

[124] See the website: http://mptf.undp.org/.

[125] Glemarec et al. (2015), op. cit., pp. 10-12.

skills or increased product availability. Output indicators are set for each project, which is directly accountable for its performance.

In line with these guidelines, UN agencies set up their own results-monitoring framework, which is then applied to trust funds. A review of the results frameworks of several trust funds managed by the UN is beyond the scope of this study but, to give an indication of what this broadly entails, the framework set up by the UN Women agency is briefly described. As part of the Strategic Plan 2018–21, UN Women has set up an Integrated Results and Resources Framework (IRRF)[126] which defines expected results and lists indicators to be used to assess the progress made. The framework has *three levels of results*: impact, outcome and output. Impact results are envisaged to be achieved by 2030 and aim at changing behaviours in the long term. Outcome results are those met thanks to the contribution of UN Women and are measured against shorter-term indicators, which nonetheless remain relevant for several years. Output results are obtained thanks to the direct action of UN Women in the short term. The IRRF establishes several outcome results that must be achieved to reach the intended impact. For each outcome, the IRRF has an individualised budget and several output indicators.

Targets for 2021 are established for each indicator and yearly milestones are established to ensure an ongoing assessment of progress made. While indicators provide an assessment of actions taken by projects, a qualitative assessment of the effects and actual implications may be lacking. For instance, Indicator 4.1, measuring the number of gender equality reforms developed or being implemented by electoral stakeholders, does not allow to fully assess whether these initiatives have any societal impact in practice.

Box 1. UN Trust Fund in Support of Actions to End Violence against Women

Established in 1996, the trust fund has received more than $6 billion in contributions to prevent violence against women, improve survivors' access to services and enhance law implementation. In terms of the governance structure of the trust fund, the **Steering Committee** provides guidance for the trust fund's strategy and supports the trust fund's outreach. The Global and Regional **Programme Advisory Committees** advise and support the **Secretariat**, which is in charge of reviewing grant proposals, managing disbursements and monitoring programmes. The **Administrative Agent** is UN Women, which is responsible for the legal contract with donors and grant recipients.

Source: MPTF Office Gateway (n.d.).

[126] UN Women, "Strategic Plan 2018-2021", United Nations, New York, NY, 2017, Annex 1 (http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/unw-2017-6-annex1-integrated-results-and-resources-framework-en.pdf?la=en&vs=2611).

3.2.2 World Bank Group

The trust funds set up by the World Bank Group[127] are financial agreements aimed at channelling voluntary contributions from single or multiple donors to development activities. The World Bank Group's donors encompass national governments, intergovernmental organisations, non-profit entities and private companies. The classification of the trust funds follows the fund-specific mode of execution. Accordingly, the World Bank Group's trust funds can be Bank-executed (BETFs), recipient-executed (RETFs), or they can take the form of financial intermediary funds.[128]

BETFs are funds over which the World Bank[129] has full spending authority. For this reason, BETFs are subject to the policies and procedures that regulate the World Bank's administrative budget. By contrast, RETFs are funds whose implementation is left to the final beneficiary. In these cases, the World Bank retains a mere operational function, which involves assessing and overseeing the activities funded by the facility. RETFs follow the rules that apply to all financing operations of the International Bank for Reconstruction and Development and International Development Association. Finally, financial intermediary funds are facilities for which the World Bank plays the role of a financial trustee. In this case, the World Bank does not have authority over spending or implementation, thus it cannot be held accountable for the use of resources. For this type of trust fund, rules and procedures are designed ad hoc.

If there is willingness on the part of donors to contribute to a new trust fund, the appointed task team leader prepares a trust fund proposal, which is cleared and approved internally. In exceptional circumstances,[130] the proposal may be approved by executive directors or vice presidents. Following approval, the World Bank signs legal agreements with the donors and the recipients, and funds are called from the donors.[131]

During the negotiation phase between the World Bank and the donors, the decision of establishing a trust fund by the World Bank is conditional upon the fulfilment of the criteria laid out in Operational Policy 14.40.[132] Accordingly, the envisaged trust fund must a) be consistent with the World Bank's purposes and mandate, b) be of strategic relevance for the World Bank's programme, c) ensure sound control and risk management, d) guarantee an appropriate level of governance; e) not contain any national restriction on procurement, and f) ensure a certain level of operational efficiency and sustainability.

Importantly, donors cannot impose a nationality restriction on procurement, otherwise the World Bank would not accept their contribution. This non-discrimination policy can be regarded as a practice for

[127] The World Bank Group includes five institutions: the International Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency and the International Centre for Settlement of Investment Disputes.

[128] See Independent Evaluation Group, "Trust Fund Support for Development: An Evaluation of the World Bank's Trust Fund Portfolio", World Bank Group, Washington, D.C., 2011, p. 21. See also Toma et al., "2013 Trust Fund Annual Report", World Bank Group, Washington, D.C., 2013, p. 9.

[129] The Bank is made up by the International Bank for Reconstruction and Development and the International Development Association.

[130] Refer to World Bank, "Bank Procedure BP 14.40 Trust Funds (Revised July 2015)", Washington, D.C., 2015.

[131] Ibid., pp. 2-3.

[132] World Bank, "Operational Policy OP 14.40 Trust Funds", Washington, D.C., 2008.

enhancing efficiency and competitiveness, as it does not lead to national preferences when it comes to the allocation of resources.

According to donor officials interviewed by the Independent Evaluation Group,[133] donors trust the World Bank's trust funds because of the soundness and integrity of its fiduciary and financial management. In particular, staff fulfilment of fiduciary rules is assured by three measures. First, the World Bank's Trust Fund Quality Assurance and Compliance Unit conducts reviews and ensures the trust funds' compliance with the rules. Second, trust fund management staff have to be trained and tested on relevant procedures and, third, they must sign a letter of representation every year, confirming compliance with the rules and with the internal control system. The World Bank monitors the financial performance of its trust funds and reports to donors in terms of disbursements and receipts. As explained in Bank Procedure (BP) 14.40,[134] external auditors assess whether the World Bank's internal financial control system has been effectively used. Moreover, each recipient's use of trust fund resources is assessed by auditors and then disclosed by the World Bank to the donors. Upon request from donors, and in accordance with the legal agreements, the financial statements of an individual trust fund may be externally audited.

In addition to the internal reporting system, the World Bank has a parallel Trust Fund Accountability Framework that ensures accountability to donors at both the corporate (e.g. trust fund annual reports to donors, grant monitoring system, and quality and compliance reports) and project level (e.g. in-country committees of donors and inspection visits).[135] To get a concrete idea of how accountability is ensured in practice, the example of the Afghanistan Reconstruction Trust Fund (ARTF) is presented.

The accountability and transparency of the ARTF relies on the trust fund's Results Management Framework, which lays out the procedures for results monitoring and reporting.[136] This framework envisages different mechanisms for results reporting, at both the fund and project level. Results are organised under four pillars, namely country-level outcomes, project and programme-level outcomes, the operational effectiveness of projects and trust fund effectiveness in managing resources. Performance assessment of the progress towards results in each pillar are published annually in the ARTF Scorecard,[137] which presents a detailed assessment of performance against some preset indicators and targets. The Scorecard links results to the broader development strategy for Afghanistan that is laid out in the Afghanistan National Development Strategy and put into action in the National Priority Programmes. At the project level, the trust fund reports on implementation by tracking and assessing results according to project indicators, in addition to a completion report once the project is over.[138]

[133] Ibid., p. 50.

[134] World Bank (2015), op. cit., pp. 4-5.

[135] Independent Evaluation Group (2011), op. cit., p. 49.

[136] World Bank, "ARTF Results Management Framework", Washington, D.C., 2013.

[137] See the 2016 ARTF Scorecard (http://www.artf.af/images/uploads/home-slider/artf-scorecard-2016-final-web.pdf).

[138] For a detailed overview of results-reporting mechanisms, refer to Annex 1 of World Bank (2013), op. cit.

In addition to internal performance assessment, the ARTF undergoes external review. A monitoring agent ensures that all the expenditures of the trust fund are in line with eligibility criteria; assessment is carried out also with monitoring visits to project locations. Supervisory agents monitor the physical progress of projects, by taking part in inspection visits that assess the quality of work and by reporting back to the World Bank and the relevant authorities. All the reports on results mentioned in this section are available on the ARTF website, ensuring transparency for donors and the general public.

Box 2. Afghanistan Reconstruction Trust Fund

Since 2002, the ARTF has received more than $9 billion from 33 donors to finance projects in education, infrastructure and government capacity. The governance of the ARTF is organised on three levels:

- The *Steering Committee* decides the strategy of the trust fund and is composed of representatives of all donors, the World Bank and the Ministry of Finance.
- The *Management Committee* evaluates and approves grant proposals and its members are the Ministry of Finance, the Asian Development Bank, the Islamic Development Bank, UN Development Programme and the World Bank.
- The *Administrator* of the ARTF is the World Bank, which is in charge of assessing and reporting the trust fund's performance and allocation of funding.

Source: The Afghanistan Reconstruction Trust Fund.

3.3 MEMBER STATES AND THIRD COUNTRIES

It is rare that a single country creates a trust fund for development actions. Indeed, countries normally donate to trust funds administered by the IDO (and EU). There are some exceptions, namely the US, which implements very few trust funds (e.g. on technical assistance). Indeed, most of the country's development aid is channelled through bilateral agreements with the recipient or through multilateral organisations such as the UN and World Bank.

However, in the context of multi-donor trust funds, the experience of Member States and third countries may be very relevant when it comes to democratic scrutiny. Indeed, IDOs are not subject to direct democratic control, since, for instance, the UN and the World Bank have no institutions granting citizens' representation. Nevertheless, democratic scrutiny over the sums allocated by governments to IDO-managed initiatives is designed to happen at the national level, before the actual contribution to the trust fund takes place.

Italy is presented as an illustrative example. According to Art. 12 of the Regulation governing the operations of the Italian Agency for Development Cooperation,[139] the Ministry of Foreign Affairs drafts

[139] Italy XVII legislature, Schema di documento triennale di programmazione e di indirizzo della politica di cooperazione allo sviluppo riferito agli anni 2015-2017, cui è allegata la relazione sulle attività di cooperazione allo sviluppo, riferita all'anno 2014 (A.G. 187), Rome, 2015, 10.

the three-year programme of the Agency, in official consultation with both the relevant parliamentary committee and the Ministry of Economy. After being approved by the inter-ministerial committee on development, the draft programme is officially authorised by the Council of Ministers.

The Ministry of Foreign Affairs is responsible for the correct implementation of the development programmes in front of the national parliament. Point 4 in Art. 12 requires the Ministry of Foreign Affairs to complete an annual report on the status of ongoing development programmes supported by the Italian Agency for Development Cooperation as well as the programmes implemented through international organisations, banks and investment funds. The report must provide quantitative indicators, in accordance with the guidelines provided by the OECD's Development Assistance Committee. Thus, in Italy, democratic scrutiny takes place through the accountability of the Ministry of Foreign Affairs to the national parliament.

A second example worth considering is that of the US Agency for International Development (USAID). USAID is an independent agency that works in cooperation with the State Department, from which it receives foreign policy guidelines. Every year, US foreign operations are scrutinised by Congress in the context of the Congressional Budgetary Justification, where USAID explains to Congress the budget requested for the following year.

Additionally, Congress can and does ask USAID to provide reports on different matters, which include an annual performance report where the agency presents the progress made in meeting preset strategic goals. Indeed, USAID and the State Department establish a four-year Joint Strategic Goal Framework that pairs a set of strategic development goals with specific objectives to be achieved by the end of the period. In the Annual Performance Report, the agencies evaluate results against a number of concrete indicators for each strategic objective. Indicators have pre-established targets for each year, making the performance evaluation process simple and transparent.[140]

3.4 EU BLENDING INSTRUMENTS

First introduced in the Multiannual Financial Framework 2007–13, blending instruments use EU budget grants to mobilise additional resources (loans or equity) from financial institutions (e.g. the European Investment Bank and national development banks), and public and private investors. What is the role of blending instruments in relation to multi-donor trust funds and to their respective objectives?

'Blending' is inherently different from pure 'grants', as the grant element is mainly supporting technical assistance or guarantees and risk capital of Financial Institutions to offer debt and equity instruments under an acceptable level of risk. Financiers are not donors, but investors (mainly public with a mandate) that require the recovery of the loan and associated costs. Thus, the development projects financed through blending mechanisms have to be capable of generating enough resources to ensure the repayment of the debt.[141] The objective of blending instruments is not only to have a development impact, but also and especially to attract financing for economically viable projects that would be too risky otherwise.

[140] For the complete list of key performance indicators, see US Department of State and USAID, "FY 2016 Annual Performance Report", Washington, D.C., 2017.

[141] Jorge Núñez Ferrer et al., "Blending Grants and Loans in the Light of the new DCI", Study for the European Parliament (PE 433.784), Brussels, 2012, p. 9.

The EU budget contributions to blending instruments fund (as well as additional top-ups by Member States to the fund) are non-repayable. Financial institutions using blending instruments' fund can offer, a) investment grants in order to reduce the project's total cost; b) technical assistance (e.g. project preparation and/or supervision, capacity building); c) interest rate subsidies to increase beneficiaries' access to cheap financing; d) guarantees that reduce investment risks by covering potential losses; and e) risk capital in the form of equity, loans or quasi-equity.[142]

EU blending operations for development purposes are organised under four blending frameworks, according to the financing instruments used for disbursing EU funding. The first two frameworks are under the responsibility of DG DEVCO, while the others fall under DG NEAR.[143]

EU blending facilities, with the exclusion of the Western Balkans Investment Framework, have a governance structure based on three levels: a strategic board/steering committee, an operational board and a finance institutions group. The steering committee (composed of the European Commission, and donor and beneficiary countries) sets the strategy of the facility in line with the broader EU development policy for the region, which ensures oversight of the actions of investors. The operational board, composed of the European Commission, Member States and other donors, evaluates project proposals and approves disbursements. If the grant element is made up of both EU budget and Member State contributions, the board has a trust fund manager responsible for it. The financial institutions group is composed of representatives of the international financial institutions participating in the facility, once they have been accredited by the European Commission. The group selects projects to be brought to the operational board for approval.[144]

The lead financial institution is in charge not only of the implementation of projects, but also of monitoring and reporting operational and financial results. The operational results are monitored in terms of project outputs, against benchmarks agreed by the financial institutions and Member States. Financial monitoring assesses the leverage effect of the grant, the value of the investment, the balance of the fiduciary account and the measurement of losses. Even if the lead financial institution is responsible for monitoring, the European Commission is the entity accountable for the use of EU funds, and may participate in the oversight of the performance of the blending instrument.[145]

Concerning the European Parliament's oversight of blending instruments, one must refer to Title VIII of the Financial Regulation. Art. 140(8) states that the European Commission reports annually to the Council and the EP about the activities of financial instruments.[146] Information to be disclosed for each instrument includes, among other things, budgetary commitments and payments, the investments undertaken, the performance of the instrument, an evaluation of the use of the amounts returned to the instrument, and the contribution of the instrument to the achievement of preset objectives. The EP, as well as the Council, can request a discontinuation of the instrument in the case where it considers

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[142] European Commission, "Guideline N. 5. Guidelines on EU Blending Operations", Brussels, 2015(b), p. 9.

[143] The DCI Blending Framework includes the Latin America Investment Facility, Asia Investment Facility, and Investment Facility for Central Asia. The Africa Investment Facility, Caribbean Investment Facility and Investment Facility for the Pacific are under the umbrella of the EDF Blending Framework. The ENI Blending Framework encompasses the Neighbourhood Investment Facility and the Instrument for Pre-Accession Assistance Blending Framework provides funding to the Western Balkans Investment Framework.

[144] See Núñez Ferrer et al. (2012), pp. 24-26, and ECA, "The effectiveness of blending regional investment facility grants with financial institution loans to support EU external policies", Special Report No. 16, Luxembourg, 2014, p. 9.

[145] European Commission (2015b), op. cit., p. 48.

[146] Regulation No. 966/2012, op. cit.

that the *objectives* of the instrument have not been effectively achieved (Art. 140(9) Financial Regulation).

In light of the above, blending is hardly compatible with the preconditions laid out in Art. 187 of the Financial Regulation. Indeed, as mentioned in section 1 of the present study, EUTFs must be limited to *emergency and post-emergency situations*, where the conditions for viable and profitable projects are in general absent. For this reason, EU blending facilities should not be confused with the EUTFs analysed in this study, as the support scheme they provide is extremely different in nature.

3.5 REVIEWING THE TRUST FUNDS AND THE FACILITY FOR REFUGEES IN TURKEY

This section compares EUTFs with the trust funds of other international development actors, with the aim of extracting some 'promising practices' from the latter. Trust funds being the subject of this study, comparison cannot be made with other forms of development aid instruments. For this reason, bilateral aid is not assessed as it follows completely different procedures. The bilateral aid, such as that of Italy or USAID discussed above (see section 3.3), is subject to national democratic oversight, which cannot be achieved in the case of multi-donor trust funds. Thus, the focus will be on the United Nations and the World Bank, both of which have a long history of setting up and managing multi-donor trust funds.

While it is possible to compare the governance and practices of trust funds between the EU and these international institutions, one has to keep in mind the existence of major differences. First, UN and World Bank trust funds receive contributions from a much larger number of donors compared with EUTFs. Second, the UN and World Bank systems do not envisage democratic accountability through an elected supranational parliament. Indeed, within these systems a supranational democratic body comparable to the European Parliament is simply not present. Democratic scrutiny is not carried out at the trust fund level, but at a national level, before the donation is transferred. National parliaments are in charge of this process.

The EU channels large amounts of funding to trust funds managed by the UN and the World Bank. It is entitled to monitor and assess the use made by the two international organisations. The cooperation between the EU and the UN is regulated by the Financial and Administrative Framework Agreement, the latest version of which entered into force in 2014.[147] The contractual relationship with the World Bank is laid out in the Framework Agreement signed in 2009.[148]

In the context of these two agreements, the EU can monitor and check whether its funding is used as agreed. According to the Financial Regulation, the European Commission checks whether the UN and World Bank control systems comply with international standards in the following fields: procurement, external audit, internal control, accounting, grants and financial instruments. The European Commission and the ECA have the mandate to carry out audits to check the way funds are used. However, these assessments can be only done on the global budget as it is impossible to separate EU-donated funds from others, since earmarking is not permitted. At the same time, the EU can ask the UN or World Bank to report on specific issues only *ex post*, when the regular results reporting is not deemed

[147] Available online at https://ec.europa.eu/europeaid/node/45445.

[148] See https://ec.europa.eu/europeaid/funding/procedures-beneficiary-countries-and-partners/fafa-world-bank_en.

sufficient.[149] Similarly, interviewees in the scope of this study expressed concerns about the visibility of EU funding when it goes through the UN or World Bank funds.[150]

Both the World Bank and the EU stipulate a number of criteria that have to be met by a potential trust fund. These criteria were mentioned in section 2.1 for the EU and in section 3.2.2 for the World Bank. Both actors stress the importance of strategic relevance, efficiency, avoiding duplication and sound risk management. However, one the of World Bank's criteria is the rejection of nationality restrictions on procurement, meaning that contributions cannot be accepted if they come along with a nationality imposition. With the exception of the Madad Fund, the EUTFs state in their constitutive agreements that implementation by EU Member States or other trust fund donors is to be preferred (see section 2.2). It can be argued that the imposition of national preferences undermines efficiency, as the competitive process for the selection of implementing partners is biased. Although the EUTFs do not allow for nationality restrictions either, their *a priori* preference for national implementing structures (although not specifying which national structures, of course) can be seen as impeding a selection process that is as open as possible to arrive at the most cost-effective and capable implementing partner.

Trust funds' governance structures differ. The EUTFs have a two-level structure, with the Trust Fund Board in charge of the strategy of the trust fund and the Operational Committee in charge of operations. The decision of allocation and disbursement of funding to projects is taken by the EUTF Operational Committee, where the European Commission and the donors have voting rights (see section 2.1). The proposed governance structure of UN trust funds, although not binding, sees one major body, the steering committee, which is in charge of both the strategy of the trust fund, the allocation of resources and the selection of projects (see subsection 3.2.1). The actual disbursement is then made by the administrative agent, which also signs a legal agreement and evaluates the trust fund's performance.

Concerning accountability of trust fund operations, one can identify two promising practices: one from the results monitoring and reporting framework of the ARTF managed by the World Bank, and one from the UN MPTF Office.

The ARTF has put in place an extensive results-management framework that classifies expected outcomes according to the trust fund's objectives. A detailed performance assessment is published regularly in a selection of formats ensuring transparency and holding the trust fund and the World Bank accountable for their operations. As mentioned in subsection 2.4.1 above, by comparison EUTFs are less organised when it comes to results monitoring and reporting. At the time of writing, some EUTFs do not have a results-monitoring framework in place, while those that have one may not clearly report on progress made to meet the indicators laid out in their own framework. Of course, when comparing EUTFs with the ARTF one has to consider that the latter was set up in 2002, thus having much more time to improve results-monitoring and performance-assessing frameworks. The example of the ARTF could be considered a promising structure with which EUTFs could potentially align.

From the UN, a promising practice for improving accountability is the existence of a managing actor, the MPTF Office, which manages approximately 95% of all the UN's multi-donor trust funds. The presence of an office that administers all trust funds enhances efficiency, as it provides a consistent

[149] European Commission (2016d), op. cit., pp. 4–5.

[150] Interview Nos 1, 19, 20 and 22, European Commission, November–December, 2017.

approach across trust funds and allows the proliferation and communication of best practices. Additionally, the MPTF Office has a public online platform, called the "MPTF Office Gateway", with a page dedicated to each trust fund where information about the governance structure, donors, contributions and disbursements to projects is listed. A single, exhaustive online platform is good for transparency purposes.

By contrast, information about EUTFs in not collected in a single platform. Rather, each trust fund has a page on the Commission's website where information is displayed in a non-consistent manner. The Commission could thus envisage setting up a similar office and gateway to further increase efficiency, coherence and transparency, as well as a dedicated website for each trust fund where all relevant reporting is published, including performance assessments.

4. GENERAL RESULTS AND POLICY CONSEQUENCES

4.1 QUANTITATIVE OVERVIEW

This section provides an account of the implementation status of the four EUTFs and the FRT that are the subject of this study. By drawing from the latest publicly available data on funded projects (published in annual reports or in separate updates), this part of the study presents a snapshot of how the trust funds' resources have been disbursed so far. The analysis is developed on two levels: one looks at the types of implementing partner to whom projects are awarded, while the other assesses the areas of intervention where funding is channelled.[151]

One can identify five types of project partners: (i) IDOs such as the World Bank and the UN; (ii) national organisations (including national promotional banks, national development agencies and national ministries); (iii) NGOs; (iv) academic organisations and (v) private companies.[152] From the published accounts of projects funded by the trust funds, the listed implementing partners are categorised among the five above-mentioned types.

Also for the sake of comparison, we classify projects' areas of intervention into some general sectors: health and healthcare, education, technical assistance, socioeconomic support, food security, reconciliation, gender issues, urban rehabilitation, basic social services, environmental protection, migration management and humanitarian assistance. This classification reflects the information provided in the publicly available lists of projects, with some rearrangements made by the authors. Examples of projects that provide socioeconomic support include easier access to financing for economic recovery, support for local populations affected by an influx of refugees and support for the creation of employment opportunities. Projects implemented under the EU Emergency Trust Fund for Africa are not categorised within these sectors because the published list of funded projects in the fund's 2016 Annual Report[153] classifies projects by the specific objectives they serve, a structure we replicate here.

[151] The computations presented in this section are based on a technical annex (Excel file) that is not part of this report.

[152] This classification has been created by the authors of this study in order to summarise the different actors in a comparable way.

[153] European Commission (2017b), op. cit., Annex 1.

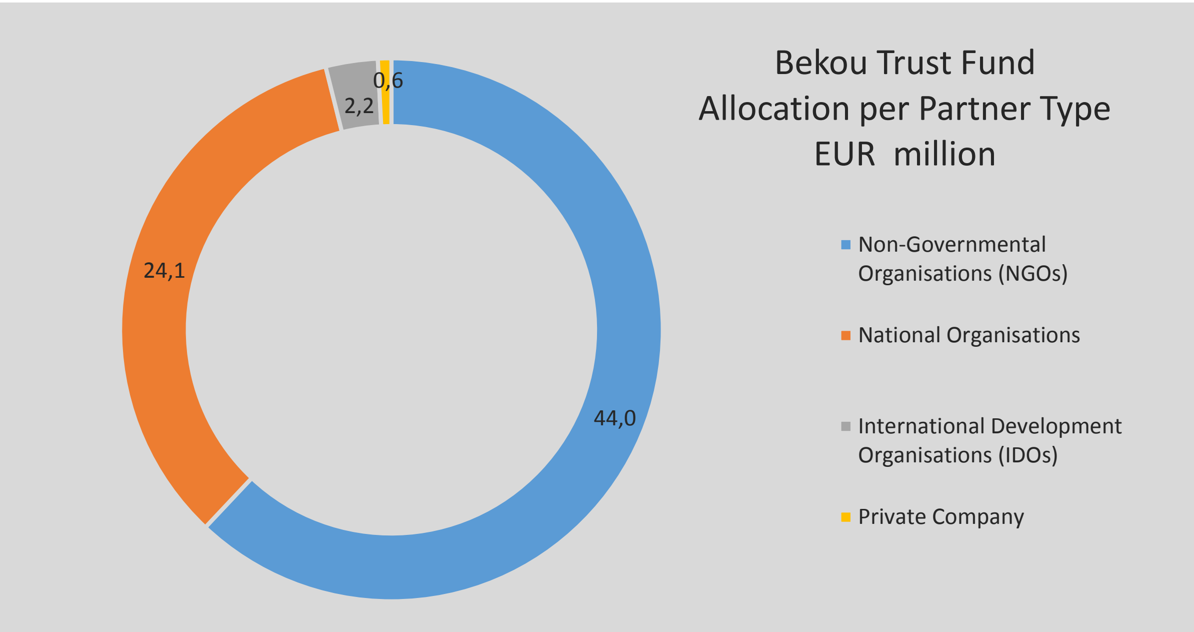
4.1.1 Bêkou Trust Fund

Implementing partners

This trust fund's pledged contributions amount to EUR 233 million, of which EUR 86 million have been received. Resources come from the EU budget, the EDF (which accounts for half of the pledged contributions) and some Member States, namely Germany, France, the Netherlands, Italy and Switzerland.[154] As of the end of 2016, the trust fund had granted EUR 71 million to 31 projects in the Central African Republic. The average contract duration is 19.3 months, while the average grant per project is EUR 2.3 million.

As presented in Figure 4, the large majority of the trust fund's resources (EUR 44 million or 62%) is granted to projects implemented by NGOs. Member States' bilateral agencies (represented in the category of national organisations) manage projects worth EUR 24 million, followed by IDOs (EUR 2.2 million) and private companies (EUR 1 million). NGOs dominate also in terms of the number of projects run: 22 projects out of 31, i.e. 71%.[155]

Figure 4. Bêkou Trust Fund – Allocation by partner type (EUR million)



Note: As of 31 December 2016.

Source: Authors' calculations based on ECA, "The Bêkou EU Trust Fund for the Central African Republic: A Hopeful Beginning despite Some Shortcomings", Special Report No. 11/2017, Luxembourg, 2017(a), Annex 1.

Areas of intervention

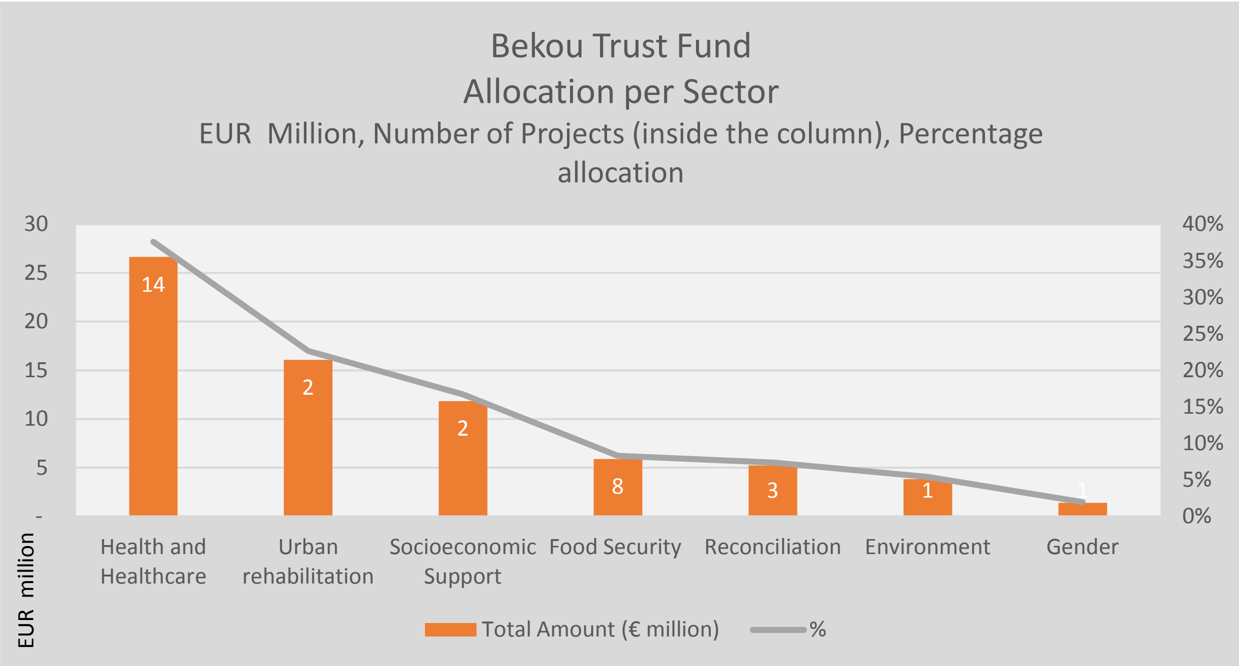
Projects are implemented in a variety of areas of intervention. Figure 5 shows the breakdown by sector in terms of the value of disbursement – expressed also as a percentage of the total and number of projects. Fourteen projects operate in healthcare improvement, with a total value of EUR 27 million (38%). Urban rehabilitation is addressed by two projects that have disbursed EUR 16 million of funding

[154] European Parliament (2017), op. cit., p. 30.

[155] ECA (2017a), op. cit., Annex 1.

(23%). Two projects provide socioeconomic support (EUR 12 million, 17%), e.g. improving the management of forestry resources. Other minor areas of intervention are food security, reconciliation, environmental protection and gender issues.

Figure 5. Bêkou Trust Fund – Allocation by sector (EUR million, percentage of total funding, and number of projects)



Note: As of 31 December 2016.

Source: Authors' calculations based on ECA, "The Bêkou EU Trust Fund for the Central African Republic: A Hopeful Beginning despite Some Shortcomings", Special Report No. 11/2017, Luxembourg, 2017(a), Annex 1.

Case study: The Central African Republic

In 2013, a political and security crisis broke out in the Central African Republic, leaving large parts of the population in distress, internally displaced or seeking refuge abroad. The country had no formal government in place, making impossible the provision of aid through formal instruments, e.g. the EDF. To provide aid, support and help in stabilising the country, in July 2014 the European Commission, together with France, Germany and the Netherlands, established the Bêkou Trust Fund, which is the first EU multi-donor trust fund. Subsequently, also Italy and Switzerland became donors to the trust fund.

In 2017, following a partial de-escalation of violence and the regular election of a government, the EU started a National Indicative Programme funded under the 11th EDF. Through the National Indicative Programme, the EU has pledged EUR 327 million in three areas of priority: economic and social governance, security and democracy, and resilience.[156] The funding dedicated to strengthening

[156] European Commission, "Programme Indicatif National pour la période 2014-2020 pour la République Centrafricaine", Brussels, 2017(g).

resilience will be channelled through the Bêkou Trust Fund, which remains complementary to the newly created National Indicative Programme.[157]

As laid out in Art. 2 of the Constitutive Agreement, the objectives of the Bêkou Trust Fund are to “provide consistent, targeted aid for the resilience of vulnerable groups and support for all aspects of the Central African Republic’s exit from the crisis and reconstruction, to coordinate actions over the short, medium and long term and to help neighbouring countries cope with the consequences of the crisis”. Actions taken range from the provision of basic public and social services, e.g. access to water, electricity and education, to administrative capacity building and reconciliation efforts. In addition, the trust fund aims at helping neighbouring countries in coping with the influx of refugees from the Central African Republic.

Areas of intervention

Already briefly discussed above in this section, the projects financed by the trust fund are described more in detail here. While in Figure 5 above projects were categorised according to a sectoral allocation that was commonly applied to all the EUTFs, here the categorisation follows the original categorisation that is mentioned in the published list of projects. For example, projects that in Figure 5 above were in the category of socioeconomic support, in this section are divided into two priorities: refugees and economic recovery. This gives more specificity on the funded areas of intervention.

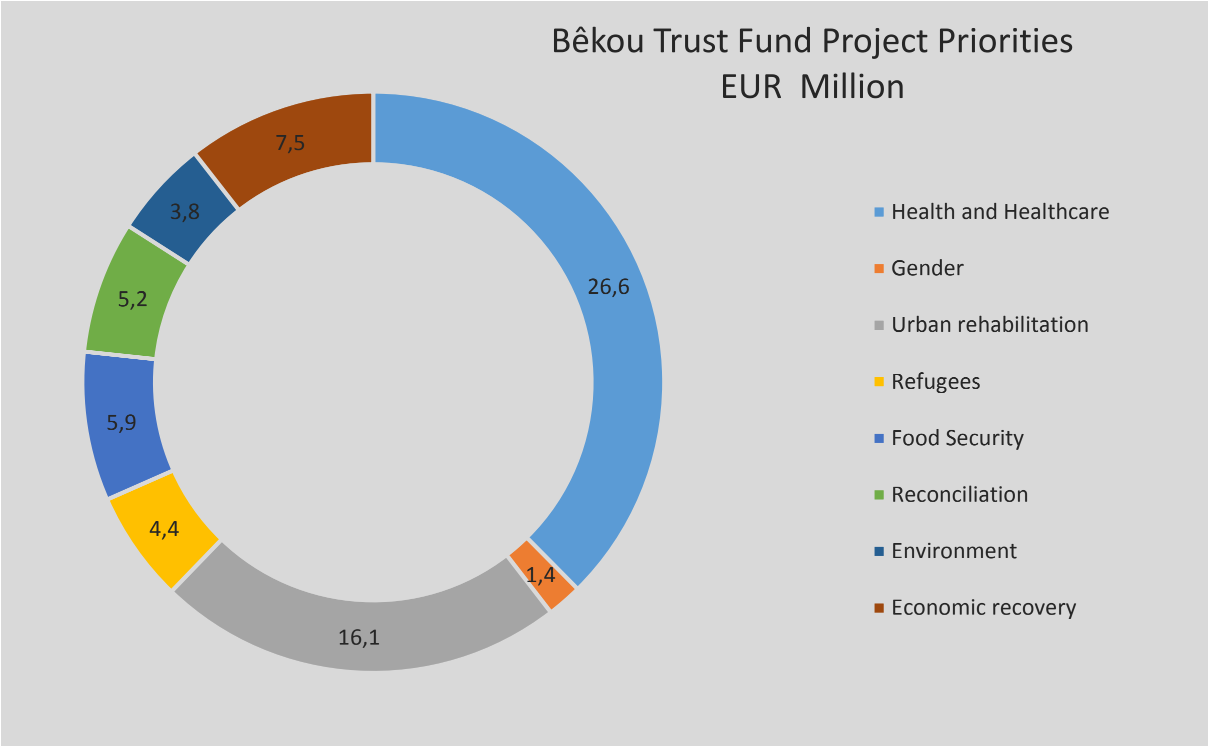
Figure 6 presents the areas of intervention of the 31 projects financed by the Bêkou Trust Fund as of the end of 2016. As a new Operational Committee meeting was expected to take place in December 2017, new projects are likely to be contracted soon. For each project priority the amount of resources disbursed is displayed in both absolute and percentage values. Fourteen projects, cumulatively worth EUR 26.6 million operate in the healthcare sector and are all awarded to NGOs. In particular, eight projects provide support to strengthen and improve healthcare facilities in different regions of the country, four projects provide medical and nutritional assistance to the population and two projects are more of a technical nature. Urban rehabilitation programmes (EUR 16 million, two projects) aim at improving the economic and social reconstruction of urban areas and are implemented by Member State bilateral agencies. Measures to ease access to financing are worth EUR 7.5 million and aim at stimulating economic recovery.

A project worth EUR 4.4 million undertakes actions in support of Central African Republic refugees in Cameroon and host communities. It is estimated that 11,400 refugees and 5,000 people from hosting villages have received direct benefit from the actions, plus a number of indirect beneficiaries.[158] Food security is addressed by eight projects that implement vaccination campaigns and provide seeds and tools to farmers (EUR 5.9 million). The partners for these projects are NGOs and two international organisations. Reconciliation efforts are financed by three projects that provide local services and support, e.g. to a radio station for a total amount of EUR 5.2 million. NGOs manage projects for both environmental protection (EUR 3.8 million) and support for women (EUR 1.4 million) through the creation of value-generating activities and literacy campaigns.

[157] Interview Nos 14 and 15, European Commission DG DEVCO, November 2017.

[158] European Parliament (2017), op. cit., p. 18.

Figure 6. Bêkou Trust Fund – Project priorities (EUR million)



Note: As of 31 December 2016.

Source: Authors' calculations based on ECA, "The Bêkou EU Trust Fund for the Central African Republic: A Hopeful Beginning despite Some Shortcomings", Special Report No. 11/2017, Luxembourg, 2017(a), Annex 1.

Implementing partners

As noted above, NGOs are awarded the majority of the allocated funding (EUR 44 million out of EUR 71 million), followed by Member State bilateral agencies (EUR 24 million), IDOs (EUR 2 million) and private companies (EUR 1 million). However, once we take the number of projects into account, the picture shows clearly that Member State bilateral agencies are the implementing partners of the largest projects, while NGOs are awarded smaller ones. Indeed, Member State bilateral agencies, e.g. KfW and AdF, manage projects worth much more than the average (Table 3).

Table 3. Bêkou Trust Fund project allocation

ORGANISATION	NUMBER OF PROJECTS	TOTAL FUNDING (EUR MILLION)	AVERAGE VALUE PER PROJECT (EUR MILLION)
International development organisations	2	2	1
Non-governmental organisations	22	44	2
Private companies	3	1	0.3
Member State bilateral agencies	4	24	6
Total	31	71	2.3

Note: As of 31 December 2016.

Source: Authors' calculations based on ECA, "The Bêkou EU Trust Fund for the Central African Republic: A Hopeful Beginning despite Some Shortcomings", Special Report No. 11/2017, Luxembourg, 2017(a), Annex 1.

This situation reflects the considerations expressed by the ECA[159] that mention the presence of conflicts of interest in the Operational Committee, where Member States are represented by their own national development agencies, which in turn are selected as project implementers.[160]

4.1.2 Madad Fund

As of October 2017, the Operational Board of the EU Regional Trust Fund in Response to the Syrian Crisis had allocated EUR 1 billion to projects. Moreover, EUR 511 million had been contracted to project partners and EUR 244 million had already been disbursed across 25 projects. The average duration of financed projects is 27.8 months, while the average financing commitment per project amounts to EUR 20.6 million. At present, the average disbursement per project is EUR 9.8 million. Among the projects, 60% (15) are cross-border initiatives.

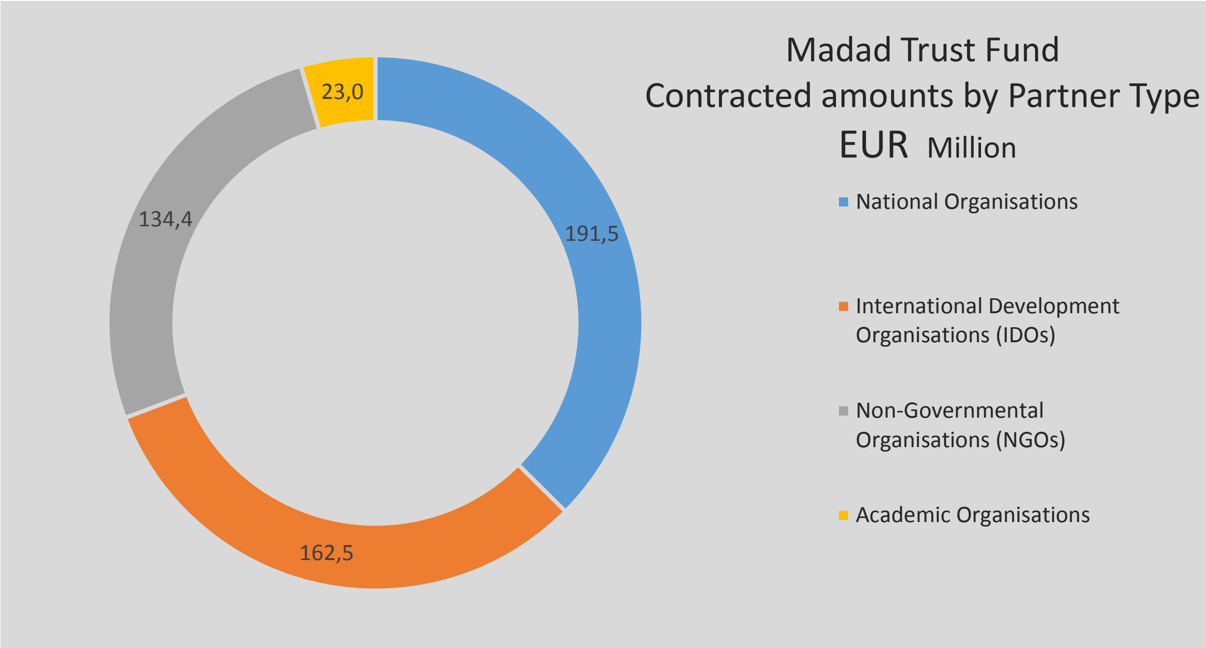
Implementing partners

As presented in Figure 7, national organisations have been awarded the largest share of the Madad Fund projects, namely EUR 191.5 million. These include the German, Italian and French national agencies for international cooperation (EUR 114 million in total), the German national promotional bank (KfW), which was awarded a project worth EUR 70 million, and the Serbian Ministry of Employment with a project valued at EUR 7.3 million. IDOs, which encompass different UN agencies and the World Bank, have been awarded projects worth in total EUR 162.5 million. The value of projects implemented by NGOs is EUR 134.4 million. Finally, two German academic organisations are implementing two projects worth EUR 23 million in total.

[159] ECA (2017a), op. cit., pp. 23-24.

[160] Interview Nos 14 and 15, Commission DG DEVCO, November 2017.

Figure 7. Madad Trust Fund – Contracted amounts by partner type (EUR million)



Note: As of 19 October 2017.

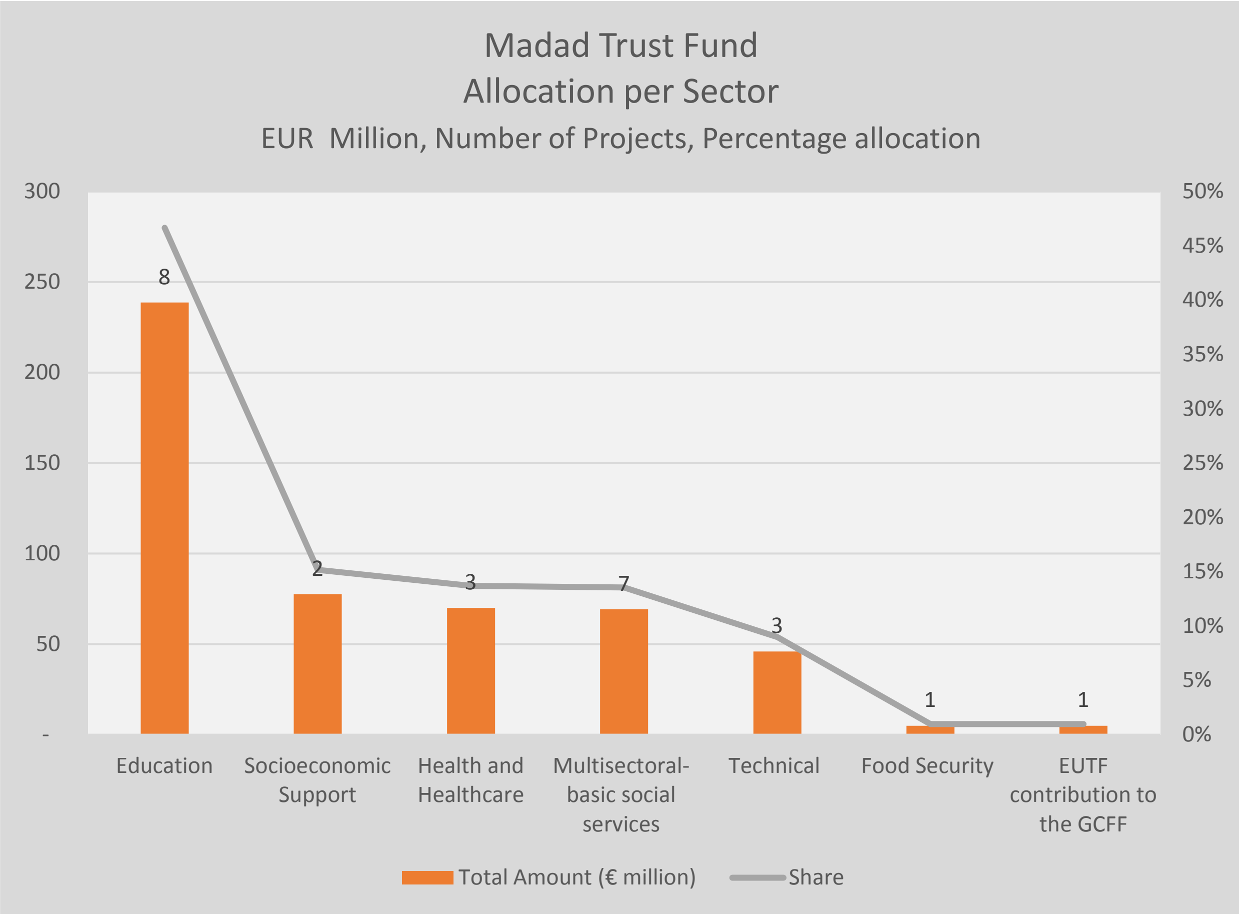
Source: Authors' calculations based on European Commission, "The EU Regional Trust Fund in Response to the Syrian Crisis: Projects contracted – Status 19/10/2017", Brussels, 2017(h).

To give a more detailed picture, one also needs to attribute weight to the number of projects implemented by each partner type, by computing the average project value. National organisations manage six projects that are worth on average EUR 32 million. IDOs manage eight projects worth on average EUR 20.3 million. NGOs implement the largest number of projects, i.e. nine, but their average value is only EUR 15 million.

Areas of intervention

Regarding the sectoral coverage (Figure 8), the largest number of projects have been approved in the field of education (eight projects for a total allocation of EUR 238 million), dealing with both education and child protection as well as higher education. Seven multi-sectoral projects (EUR 69 million) address fundamental social needs and aim at improving living conditions of both Syrian refugees and local host communities. Three projects (EUR 70 million) focus on healthcare while two projects (EUR 78 million) provide socioeconomic support. Furthermore, three projects (EUR 46 million) are of a more technical nature and deal with the restoration of basic infrastructure, such as the water sanitation facilities.

Figure 8. Madad Trust Fund – Contracted amounts by sector (EUR million, percentage of total funding, and number of projects)



Note: As of 19 October 2017.

Source: Authors' calculations based on European Commission, "The EU Regional Trust Fund in Response to the Syrian Crisis: Projects contracted – Status 19/10/2017", Brussels, 2017(h).

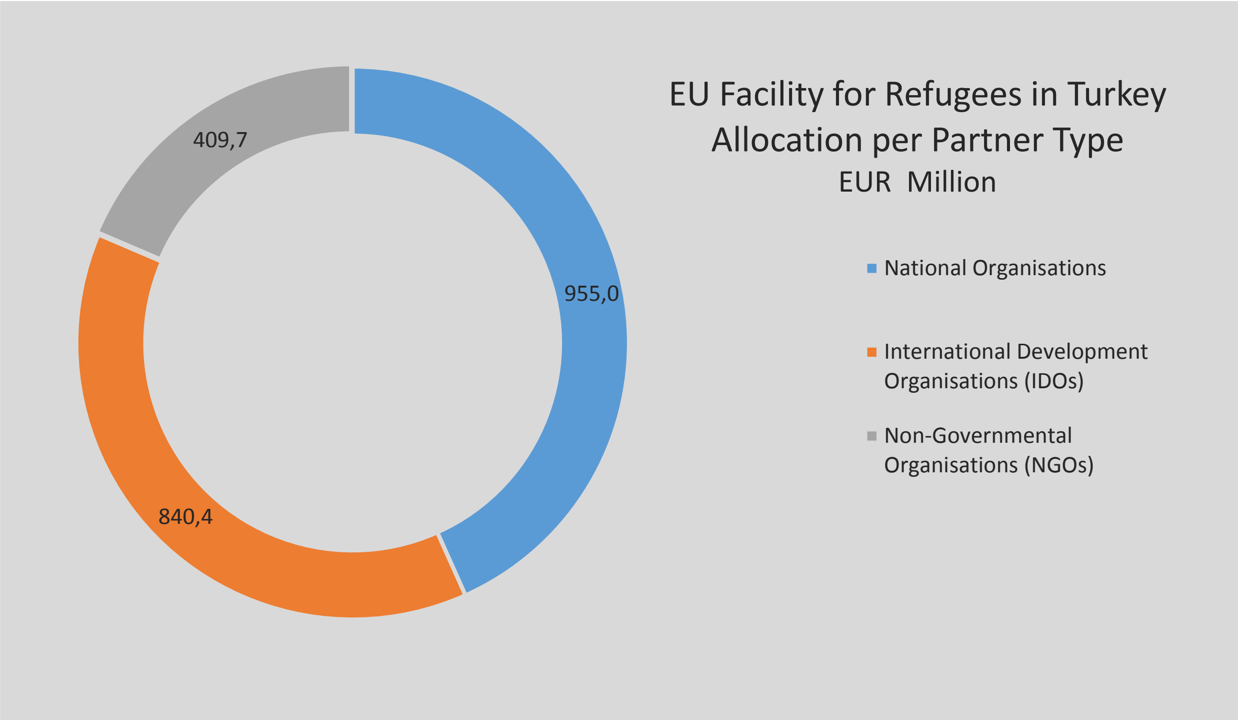
4.1.3 EU Facility for Refugees in Turkey

The FRT has committed EUR 2.9 billion to humanitarian and non-humanitarian projects on the ground. Of these, as of 20 October 2017, EUR 1.69 billion had been contracted and EUR 899 million had been disbursed. The analysis in this section will refer to committed amounts, a part of which (EUR 698 million) will not be considered because it has not yet been allocated and is waiting for project proposals to be submitted. This analysis will thus concern the EUR 2.2 billion of committed resources that have already been allocated.

Implementing partners

National organisations represent the largest partner type in terms of project values. This category includes government agencies, i.e. the Turkish Ministries for Health and Education, which implement three large projects with a total value of EUR 660 million, and national promotional banks, namely Germany's KfW and France's AdF (total project value EUR 295 million). IDOs implement eighteen projects worth EUR 840 million in total.[161] NGOs manage twenty-nine smaller projects, for a cumulative worth of EUR 410 million (Figure 9). It is of course evident that national organisations are also involved in the projects they do not implement, such as the involvement of the Turkish Coast Guard under a project implemented by the International Organization for Migration.[162]

Figure 9. EU Facility for Refugees in Turkey – Committed amounts by partner type (EUR million)



Note: As of 20 October 2017.

Source: Authors' calculations based on European Commission, "EU Facility for Refugees in Turkey: Projects committed/decided, contracted, disbursed – Status on 20/10/2017", Brussels, 2017(f).

Areas of intervention

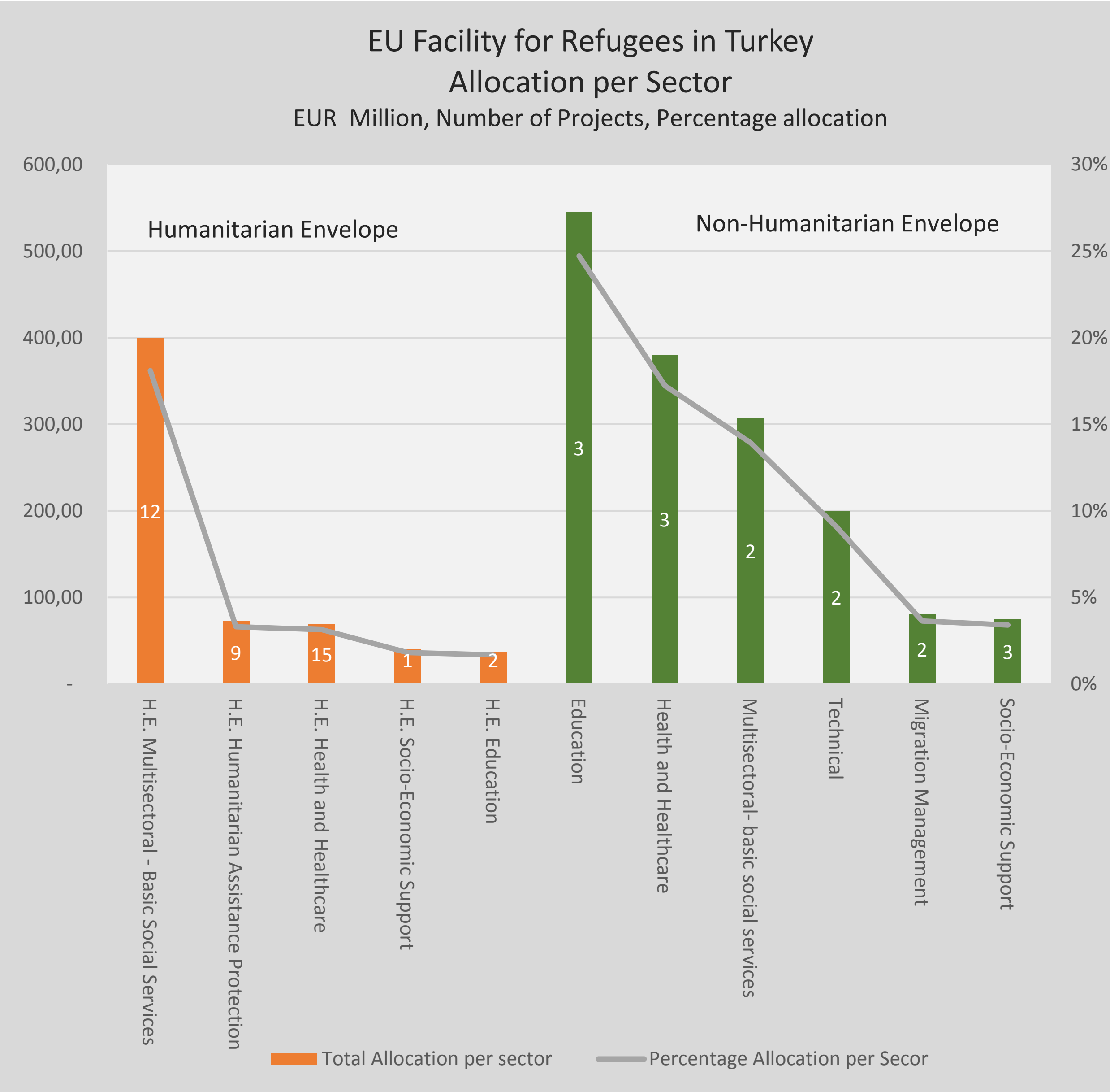
Figure 10 below shows the sectoral allocation of projects across the humanitarian (left hand side of the graph) and non-humanitarian envelopes (right hand side of the graph). The amount committed in the humanitarian envelope accounts for EUR 1.3 billion, whose only EUR 617.8 million have been already allocated. Regarding the sectoral distribution of the funds assigned for humanitarian actions, almost EUR 400 million has been allocated to twelve multi-sectoral projects, aiming at providing different basic social services. Around EUR 70 million has been allocated to nine humanitarian assistance protection projects, and a similar amount has been assigned to fifteen projects on healthcare. Finally, EUR 40 million has been allocated to one project providing socio-economic support, and EUR 37 million has been committed to two projects on education.

[161] Of these, the UNFPA manages three projects, the IOM manages three projects, the World Bank manages three projects, Unicef manages two projects, WFP manages two projects, WHO manages two projects, UNHCR manages one project, Council of Europe Development Bank manages one project, and the European Investment Bank manages one project.

[162] See https://www.iom.int/news/eur-20-million-eu-project-support-turkish-coast-guard-seeks-save-more-migrant-lives.

The amount committed in the non-humanitarian envelope amounts to EUR 1.6 billion, which is composed by fewer but significantly larger projects. In this regard, EUR 545 million has been committed across three projects related to education. EUR 380 million has been allocated to three projects on healthcare, while EUR 307 million has been committed to two multi-sectoral projects. EUR 200 million has been allocated to technical assistance projects, while EUR 80 and EUR 75 million have been allocated respectively to two migration management and three socio economic support projects.

Figure 10. EU Facility for Refugees in Turkey – Committed amounts by sector (EUR million, percentage of total funding, and number of projects)



Note: As of 20 October 2017.

Source: Authors' calculations based on European Commission, "EU Facility for Refugees in Turkey: Projects committed/decided, contracted, disbursed – Status on 20/10/2017", Brussels, 2017(f).

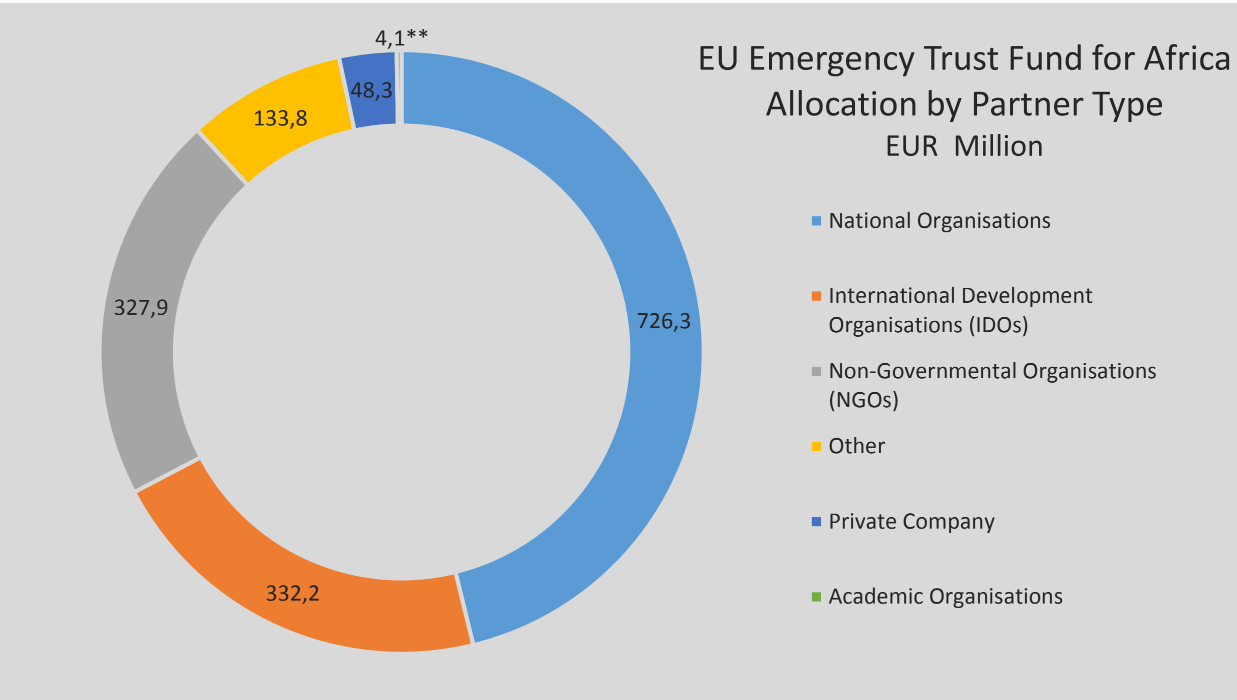
4.1.4 EU Emergency Trust Fund for Africa

The pledged funding for the activities of this trust fund amount to EUR 3.16 billion, with the majority (EUR 2.3 billion) coming from the EDF. Other contributors include the EU budget, some Member States, Norway and Switzerland.[163] As of the end of 2016, the trust fund had approved 183 projects for a cumulative worth of EUR 1.6 billion. Of these, EUR 64.5 million had been allocated to the North Africa window, EUR 606 million to the Horn of Africa window and EUR 918.5 million to the Sahel and Lake Chad window.

Implementing partners

The largest partner type is represented by national organisations, which were awarded 73 projects for a total value of EUR 726 million (Figure 11). This category includes national development agencies (54 projects with a value of EUR 516 million), national ministries and bilateral agencies. IDOs and NGOs each manage approximately 21% of the total funding (55 and 33 projects respectively). Private companies, whose names are not disclosed, carry out 7 projects worth EUR 48 million. The category 'other' includes implementing partners to be defined and those who were not disclosed.

Figure 11. EU Emergency Trust Fund for Africa – Allocation by partner type (EUR million)*



Notes: As of 31 December 2016.

* Due to statistical approximation in the source document, the sum of the amounts allocated to the projects that have been classified for this study does not match with the total reported in the source document. The difference is about 1% of the total amount.

* *The colour green indicated in the legend for academic organisations amounts to - EUR 4.1 million.

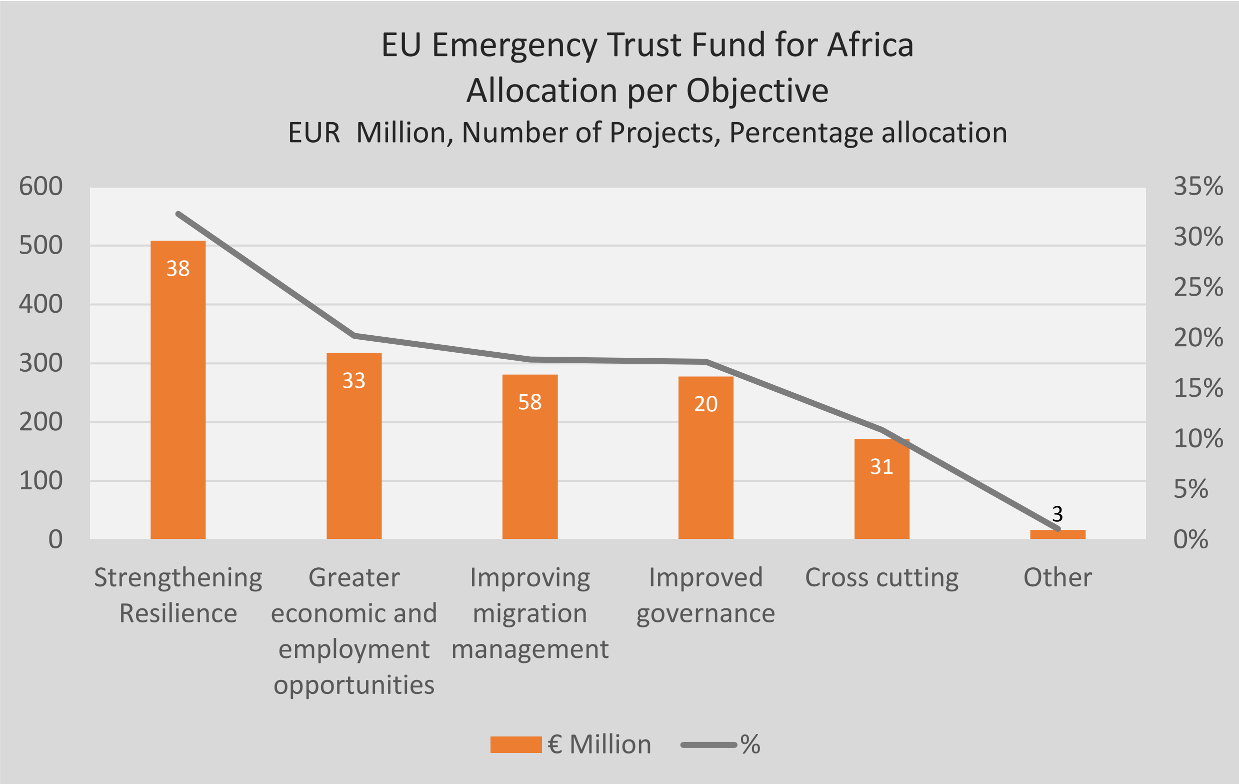
Source: Authors' calculations based on European Commission, "2016 Annual Report – The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa", Brussels, 2017(b), Annex 1.

[163] European Parliament (2017), op. cit., p. 28.

Objectives of intervention

Interventions financed by the EUTF for Africa have five major objectives (Figure 12). The largest amount of resources is set aside for strengthening resilience (EUR 508 million for 38 projects). Approximately EUR 317 million is devoted to creating economic and employment opportunities (33 projects), improving 'migration management' has received EUR 281 million in funding for 58 projects, while 20 projects for improving governance have a cumulative value of EUR 278 million. Among the programmes, 31 have multiple objectives.

Figure 12. EU Emergency Trust Fund for Africa – Allocation by objective (EUR million, percentage of total funding, and number of projects)



Note: As of 31 December 2016.

Source: Authors' calculations based on European Commission, "2016 Annual Report – The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa", Brussels, 2017(b), Annex 1.

Case study: Ethiopia

Ethiopia receives the largest amount of funding under the Horn of Africa window of the EUTF for Africa. At the time of writing (October 2017), a total amount of EUR 115 million had been or was in the process of being contracted for Ethiopia under the trust fund.[164] The main programmes currently approved and in contracting phases are illustrated in Table 4.

Table 4. EUTF Africa programmes in Ethiopia

NAME	CONTRACTING TYPE	CONTRACTING ENTITY	MILLION EUR
Ethiopia Resilience Building and Creation of Economic Opportunities (RESET II)	Invitation to submit proposals for grants	ACF, IDE UK, CORDAID, CARE NL, Dan Church Aid, VITA, Save the Children UK, Oxfam GB	44
Stemming Irregular Migration in Northern and Central Ethiopia (SINCE)	Delegated agreement, invitation to submit proposals for grants	Directorate-General for Development Cooperation, Ministry of Foreign Affairs and International Cooperation, Italy, including service contracts with ILO/UNIDO	19.845
Regional Development and Protection Programme in Ethiopia (RDPP)	Invitation to submit proposals for grants	IRC, NRC, Save the Children Fund, Dan Church Aid, Plan Foundation Netherlands	29.3
Better Resilience to Impacts of El Niño through Integrated Complementary Actions to the EU Resilience Building Programme in Ethiopia (RESET Plus)	Direct agreement through negotiation, call for proposals	Unicef, other organisations (selection in process)	22.3
		TOTAL	***115.445***

Source: Authors' compilation.

Some of these programmes, notably the Regional Development and Protection Programme in Ethiopia (RDPP) and RESET, had already been in development before the launch of the EUTF for Africa, with the latter providing a funding opportunity to speed up their introduction. In addition to the programmes in this table, Ethiopia benefits from the EUTF for Africa's regional programmes, such as the "Better Migration Management" project and the upcoming "Collaboration in Cross-Border Areas" project.[165] There is the possibility to have more programmes approved for Ethiopia, depending on decisions by the Horn of Africa Operational Committee. More support could possibly be foreseen in those future decisions for the Ethiopian Administration for Refugee and Returnee Affairs as well as more programmes to focus on stability in the country and the region.[166] It goes without saying that these

[164] See https://ec.europa.eu/europeaid/sites/devco/files/october_-2017-hoa-contract_status_overview-update-ethiopia_en.pdf.

[165] See https://ec.europa.eu/europeaid/sites/devco/files/october_-2017-hoa-contract_status_overview-update-regional_en.pdf.

[166] Interview Nos 2 and 3, Commission, DG DEVCO, October 2017, and No. 13, EEAS, November 2017.

amounts do of course come on top of the regular EDF funding for Ethiopia under the National Indicative Programme.[167]

This EUTF for Africa funding for Ethiopia arrives in a wider context of EU–Ethiopian cooperation, on both migration affairs and other priorities, such as economic development, human rights and economic development. On the 'migration file' specifically, the EU concluded a Common Agenda on Migration and Mobility (CAMM) with Ethiopia on 11 November 2015, i.e. alongside the Valetta Summit. This CAMM is a policy instrument under the EU's Global Approach to Migration and Mobility (GAMM).[168] It essentially consists of a political (non-legally binding) declaration at the highest political level, containing a commitment to cooperate across the four GAMM pillars: i) legal migration, ii) irregular migration & smuggling and trafficking, iii) migration and development, and iv) international protection.[169] As CAMMs do not qualify as 'international agreements' in light of the Lisbon Treaty, they equally escape democratic scrutiny and consent by the European Parliament. Ethiopia is also an active Steering Committee member of the 'Khartoum' process, a dialogue and platform between the EU and a number of African countries stretching up from the Horn of Africa and also including Egypt, Libya and Tunisia.[170]

The EU also earmarked Ethiopia as one of the five priority countries for a 'compact' under the EU Partnership Framework, issued in the form of a Commission Communication in June 2016.[171] This forms part of the EU's Agenda on Migration.[172] However, the 'compact' for Ethiopia is neither a publicly accessible document, nor has it been formally presented to or negotiated with the Ethiopian government. Hence, the EU 'compact' with Ethiopia remains a term that is referred to, but it is rather an empty shell and thus far void of concrete substance, let alone agreement, in EU–Ethiopian cooperation on migration.

Nevertheless, at the overall level, the EU Partnership Framework and the actions under the EUTF for Africa are explicitly linked, with the EUTF meant to "play an important role in the implementation of the Partnership Framework".[173] One of the objectives of the Partnership Framework is to curb irregular migration and to enhance the cooperation with third countries on return and readmission.

The "SINCE" is a project on irregular migration, initiated and implemented by the Italian government. It is still in the phase of contracting and calling for proposals, despite the fact that it was among the first projects approved by the Operational Committee for the Horn of Africa window. Its aims, however, are mostly related to a 'root causes' logic of reducing irregular migration, i.e. relating to enhancing livelihoods and facilitating entrepreneurship.[174]

Readmission also proves to be among the major issues in the cooperation with Ethiopia. This is true in terms of the priority given to it by the EU Member States and (some parts of) the European Commission,

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[167] National Indicative Programme for Ethiopia – 2014 to 2020, Ref. Ares(2014)2070433, European Commission and Federal Democratic Republic of Ethiopia, Nairobi, 24 June 2014.

[168] European Commission, "The Global Approach to Migration and Mobility", COM(2011) 743 Final, Brussels, 2011.

[169] Joint Declaration on a Common Agenda on Migration and Mobility between the Federal Democratic Republic of Ethiopia and the European Union and Its Member States, Valetta, 2015.

[170] See https://www.khartoumprocess.net/about/actors-and-governance.

[171] European Commission (2016c), op. cit.

[172] European Commission, Communication, "A European Agenda on Migration", COM(2015), 240 final, Brussels, 2015(a).

[173] European Commission (2017b), op. cit., p. 4.

[174] European Commission, "Action Document for the Implementation of the Horn of Africa Window (T05–EUTF–HoA– ET-02) – Stemming Irregular Migration in Northern & Central Ethiopia – SINCE", Brussels, 2016(a).

as well as in terms of Ethiopia's hesitance to agree to more cooperation in this field. Although the projects included in Table 3 above do not explicitly aim at this priority, at the policy level there is a more-for-more approach between the potential projects for Ethiopia under the EUTF for Africa and its cooperation in the field of readmission. At the time of writing, cooperation on this issue remains difficult, although an instrument other than a formal EU readmission agreement (a type of protocol) could perhaps be envisaged, potentially followed up by further EUTF for Africa projects for Ethiopia.[175] Yet so far, the actual workings of more for more can be doubted in this case study: although Ethiopia is, as noted above, the main beneficiary country under the EUTF Horn of Africa window, its "return rate" is noted by the Commission to be "one of the lowest in the region".[176]

In light of the fact that Ethiopia is dealing with a major crisis of displacement of refugees, dwarfing the numbers of potential Ethiopian returnees from the EU, the EUTF for Africa funding aims at also reinforcing the Ethiopian capacities to deal with this challenge**.** In particular, the RDPP in Ethiopia (part of a wider regional RDPP programme in the Horn of Africa) addresses a number of needs in this area, particularly of Eritrean and Somali refugees. The RDPP aims to increase social cohesion, improve livelihoods (including employment), enhance protection and support capacity building at the local level.[177]

This brief case study on the EUTF for Africa's activities in Ethiopia shows that the EUTF for Africa has been the impetus for bringing about more projects relatively quickly, albeit (so far) mostly projects that had already been under development before the EUTF for Africa's launch. The SINCE project is a clear outlier when it comes to 'speed', challenging (in this case) the assumption that the Member States' privileged implementing role under the EUTF for Africa contributes to its speedy delivery. This brief overview also emphasises the overall nature of the EUTF for Africa, namely driven by controversial policy choices, where traditional programming (as is known under the EDF) is partly replaced by non-democratic 'policy judgment' on priorities to be pursued and projects to be approved.

It underlines the need to analyse the EUTF for Africa in the overall EU foreign policy frameworks and instruments designed for external migration and development policies, where the European Parliament should – following the entry into force of the Lisbon Treaty – be a central player and inter-institutional actor. Moreover, the frequent use of open calls for proposals in this case is somewhat exceptional for the EUTF for Africa, but it goes to show that this type of contracting is not necessarily at odds with the speed and flexibility demanded from an EUTF.

[175] Interview Nos 2 and 3, Commission, DG DEVCO, October 2017, and No. 13, EEAS, November 2017.

[176] European Commission, "Fifth Progress Report on the Partnership Framework with Third Countries under the European Agenda on Migration", COM(2017) 471 Final, Brussels, 2017(c), p. 7.

[177] European Commission, "Action Fiche for the Implementation of the Horn of Africa Window (EUTF05-HoA-ETH-15), Brussels, 2016(b).

4.1.5 EU Trust Fund for Colombia

Given its very recent foundation, the EUTF for Colombia has just started four projects, but largely is still in the phase of calling for project proposals.[178] The EUTF for Colombia was established in December 2016. At present, the trust fund has pledged contributions worth EUR 95 million, and of this amount, EUR 24 million has been received. Donors include the EU budget (EUR 72 million pledged) and 19 EU Member States (EUR 23 million).[179] As for the EU budget, EUR 70 million was transferred from the DCI by DG DEVCO and EUR 2 million from DG ECHO. Out of 19 Member States only 7 have reached the EUR 3 million threshold, namely Spain, Sweden, France and Germany, plus a few others. Interviews conducted for the purpose of this study revealed that 10 Member States decided to join the EUTF Colombia after the first negative result from the referendum, where the majority of people who voted were against the Peace Agreement with FARC ex-combatants. Thus, Member States decided to join the fund even with a symbolic contribution so as to give political weight and to show support for the Colombian government to implement the Peace Agreement.[180] Even though the Member States' contributions varied greatly, it was agreed that in both the Strategic and Operational Committees, decisions will be taken by consensus. This was done as part of showing the added value of greater involvement particularly of smaller or newer EU Member States.

The Colombian government is seen as an active partner of this EUTF. It is invited to the EUTF strategic and operational meetings. The Colombian government does not have official voting rights, but it can veto the projects it disagrees with. The involvement of the Colombian government also helps to prevent various kinds of overlaps with the UN, World Bank and International Bank for Reconstruction and Development (IBRD) or third-country funds, such as the USAID. The EUTF therefore is tasked with 'rural development' in the regions that were most affected by the conflict. Also, the EUTF is tasked with helping to reintegrate the ex-combatants of FARC into socioeconomic life. Interestingly, it was decided to hold Operational Committee meetings in Colombia – at the EU Delegation in Bogota. On the one hand, this decision has enabled the better involvement of the Colombian government and other international aid organisations working on the ground (as observers), but on the other hand it makes democratic accountability to the European Parliament more difficult.

Among the EU Member States, Spain was the most active in proposing the EUTF for Colombia. This may be due to closer historical links between these regions. The EUTF was officially proposed by the EU Delegation in Bogota and by the Spanish government. Interviews highlighted that among other reasons, funding foreseen for the 2014–17 Multiannual Financial Framework was reduced because DG DEVCO was aiming to withdraw after 2017 from the medium-income countries in the Andes region, such as Colombia, Peru and Ecuador.[181] National development cooperation and aid agencies of Spain and other major donors were also active in Colombia prior the Peace Agreement via the DCI and other funds. Sweden was said to contribute not only to the EUTF, but also to all other multi-donor funds of the UN, the World Bank and IBRD.

Different committees and bodies within the EP have expressed their interest in this new fund. First of all, in November 2016 DG DEVCO, which is in the lead, was invited to present the EUTF at the meeting of the European Parliament's Delegation for relations with the countries of the Andean Community.

[178] Interview Nos 21 and 22, European Commission, December, 2017.

[179] European Parliament (2017), op. cit., p. 30

[180] Interview Nos 21 and 22, European Commission, December, 2017.

[181] Ibid.

Just after its establishment, in January 2017, the EP DEVE Committee also raised questions about the Colombia EUTF. As mentioned above, on 4 December 2017 DG DEVCO representative Stefano Manservisi was invited to the EP Committee on Budgetary Control to share information about all the EUTFs, including the EUTF for Colombia.

As a 'promising practice', since June 2017 it was also agreed to invite relevant EP committees, namely the Committee on Foreign Affairs and the Committee on Development, to the strategic meetings. Nevertheless, one of the meetings was exceptionally held in Bogota and according to interviewees, the EP representatives were also invited to attend that meeting in person. MEPs could not attend the event in Bogota and a video-conferencing alternative was not feasible at that time, according to the interviewees.[182] At the time of writing, four projects have already started and several are being contracted.[183] The ongoing projects focus on integrated rural development in 4 of the most conflict affected areas – Meta, Cauca, Choco, Valle del Cauca for a total EUTF contribution of EUR 11 million. Preliminary results include the following:

1- 7000 families in 17 municipalities involved in processes of income generation and productive projects. Aspects such as cooperatives, food security, commercialization, and access to financial assets are addressed.
2- Peace initiatives strengthened [among] farmers, indigenous and afro-descendent communities, involving over 20.000 inhabitants.
3- Environmental protection and recuperation of marine ecosystems in 13 municipalities (departments of Chocó, Valle and Cauca).

4.2 WIDER CONSEQUENCES OF EU FRAMEWORKS AND POLICIES

Although the EUTFs and the FRT can be assessed on their own merits, for any comprehensive understanding it is crucial to understand that they are intertwined with and impact on the EU's general external relations policies, in particular on EU development and external migration policies and legal acts. They therefore constitute central tools for the EU to do 'foreign policy through funding' in ways that profoundly challenge the role given by the Treaties to the EP as a 'co-owner' and legislator in some of these policy domains.

In assessing the wider consequences of the EU funding vehicles looked at in this study, here we focus on the EUTF for Africa and the FRT, in light of their policy salience. It is clear that these initiatives have implemented important projects in Africa and Turkey. The Emergency Social Safety Net (ESSN) project in Turkey is a humanitarian aid intervention with interesting features.[184] However, the scope of this study does not extend to assessing the project-level 'added value', particularly concerning their qualitative results (societal effects and human rights impacts) on the ground, or the consistency of the latter with the general or overall objectives laid down in their results-monitoring frameworks.

Our analysis shows, however, that the 'emergency-driven' nature of these EU funds makes it difficult to ascertain clear and specific policy objectives corresponding with or closely tied to EU policy objectives laid down in the Treaties and secondary legislation covering EU development and external migration policies. This in turn makes the scrutiny of the actual quality and value of their results on the ground –

[182] Ibid.

[183] Information received on 12 of December, 2017 following the information request to DG DEVCO.

[184] Solon Ardittis, "Direct Cash Grants to Refugees: The EU Experience in Turkey One Year on", *Humanitarian Law and Policy* (blog), 7 November 2017.

and their compatibility with EU policy objectives and legal commitments (the extent to which some of the results of these projects may actually run counter to some of the general objectives and legal commitments) – a rather challenging enterprise in practice.

This study primarily focuses on the level of governance, management, monitoring and oversight. That notwithstanding, it is clear that these funding vehicles are also instrumental to the EU's pursuit of policy objectives on external migration. In the case of the FRT, as explained above, its very existence is closely linked at the policy level to the implementation of the EU–Turkey Statement or 'deal' of March 2016, although legally there may not be a formal or direct link between the two. Similarly, the EUTF for Africa was instrumental in obtaining a declaration at the EU–Africa Summit on migration at Valetta in November 2015.

What the EUTF for Africa and the FRT thus share is that their *policy raisons d'être* are non-legally binding political declarations. In the case of the EU–Turkey Statement, is a 'press release' to which no EU institution appears to want to be a party, and where despite their 'political nature', the European Parliament has been actively excluded from decision-making regarding the 'policy choices' made.[185]

This cannot be seen in isolation, but rather as a trend in which different sets of non-binding extra-Treaty documents steer funding decisions, also channelled through extra-budget structures (EUTFs). This is quite a different approach from the EU's regular one to international agreements, where the Treaty-based mechanisms would apply, such as a consent of the EP. It effectively means that the EP was not entitled to secure a democratic debate over the political context and priorities in which these funding vehicles have been established. This is an observation about the challenges to the legal and democratic order that the Lisbon Treaty was to herald in the EU. If the funding instruments are to be truly 'political', the EP is the only actor in the EU able to provide the venue for a political debate on which priorities and choices to pursue when the EU goes abroad on development, humanitarian and migration policies.

Furthermore, the EUTF for Africa and the Commission-proposed Partnership Framework are clearly interlinked. This is explicitly stated but it is also clear from the joint processes of reporting. As described above in the case study on Ethiopia, this means that where a country is selected under the Partnership Framework as a 'compact' country, the EUTF for Africa is seen as instrumental for the attainment of the Partnership Framework objectives. This fits with the wider policy outlook at the EU level, clearly positing the more-for-more conditionality approach as crucial for obtaining more cooperation with third countries, especially on return and readmission of irregular immigrants and asylum seekers.[186] On the other hand, it would seem at odds with longer standing EU approaches in EU external migration policies, which rather stress a 'balanced' approach among different pillars.[187]

This underlines that for a comprehensive understanding of the EUTF for Africa's role in EU external migration policies, it is crucial to assess the rationales of incentives and demands in EU external migration policies. We could not establish whether conditionality on readmission and return was widespread across all the windows of the EUTF for Africa (e.g. beyond the case of Ethiopia). However, in this case questions arise over what the basis of project selection actually is, as there appears to be unspoken policy 'eligibility' criteria before projects are actually approved, namely cooperation on issues such as return and readmission. Although the use of conditionality for example on human rights

[185] Carrera et al. (2017), op. cit.

[186] European Council, Conclusions on the Future of the Return Policy, Brussels, 2015.

[187] European Commission (2011), op. cit.

clauses is certainly not new in EU external funding instruments, using it to obtain migration management objectives, such as on returns, does change the policy priority structure in the EU relations with Africa. Moreover, academic and policy knowledge suggests that such conditionality may not be so straightforward and easy to apply, and it may run counter to legal commitments on fundamental human rights.[188]

The EUTF for Africa also helps to set in motion a changing conceptualisation of the 'migration and development' concept. The work on migration and development has been developed at various international levels (notably, the Global Forum on Migration and Development), as well as by the EU. The EU funded, and continues to fund, several programmes aimed at harvesting the development benefits of migration.[189] This approach – essentially entailing 'migration *for* development' – is a major area of work also at the UN level and its agencies. What the EUTF for Africa has resuscitated, however, is the idea of 'development *against* migration'. This is the idea of the 'root causes' of migration, which the EUTF for Africa is aiming to address. Although commendably motivated by considerations of saving people from a dangerous journey to Europe through irregular channels (actual legal channels to Europe for third-country nationals then need to be provided, of course), the hypothesis that development can curb migration is still just that after some academic research: a hypothesis.[190]

Moreover, at the meta level, the conceptualisation of development against migration subjects development funding allocation to rationales of where the migration inflow 'origins' and 'routes' are. Such origins and routes may happen to be the places where the greatest development needs or potential are located, but not necessarily. Although translated in the European Consensus on Development in many sub-fields and priorities, the ultimate constitutional objective of EU development cooperation remains the eradication of poverty.[191] Moreover, the UN framework of Sustainable Development Goals should be kept as the key framework of reference for development cooperation in any EU-funded initiative.

For humanitarian aid, the implications of these funding vehicles lead to questions about how the humanitarian principles can be safeguarded. The involvement of humanitarian aid in the FRT, and especially the strong role of Turkey therein, challenges the purely needs-based character and the principles of neutrality, independence and impartiality.[192]

Lastly, the ever-increasing use of EU and Member State funding to safeguard the cooperation with third countries on migration faces a structural sustainability challenge. In the long term, this policy approach will prove ever costlier for the EU and its Member States. For example, the FRT now has EUR 3 billion allocated for the period 2017–18. The policy question now on the table is whether the second tranche of EUR 3 billion should be decided upon for further periods. Ending the FRT seems difficult, as it could risk overall cooperation with Turkey on refugee protection, border management and return.

[188] See e.g. Nora El Qadim, *Le Gouvernement Asymétrique Des Migrations. Maroc/Union Européenne*, Paris: Dalloz, 2015; see also European Commission (2017c), op. cit.

[189] See e.g. European Commission, "Action Fiche for 'Support to the EU-Morocco Mobility Partnership'", Brussels, 2013.

[190] See de Haas (2007), op. cit.

[191] See Art. 208(1) TFEU; see also the Joint Statement by the Council and the Representatives of the Governments of Member States Meeting within the Council, the European Parliament and the European Commission – The New European Consensus on Development 'Our World, Our Dignity, Our Future'", Brussels, 2017.

[192] Joint Statement on the European Consensus on Humanitarian Aid (2008), op. cit.

For the EUTF for Africa, the EU is facing a funding shortfall, especially for the North Africa window.[193] Nevertheless, the situation changed in December, 2017, especially as financial support for Libya was taken back on the agenda.[194] This begs the question of what the EU exit strategy out of the increasing use of such instruments for policy objectives on external migration actually is. At the policy level, the EU may be caught in a circle of financial 'commitments' to third countries from which the EU will find it very difficult to escape.

[193] See e.g. Jennifer Rankin, "EU 'Running out of Money' to Stop Migrants Travelling from Africa", *The Guardian*, 20 October 2017.

[194] Interview Nos 1, 11 and 12 European Commission, November-December 2017.

5. CONCLUSIONS AND RECOMMENDATIONS

This study has examined the four EU trust funds and the Facility for Refugees in Turkey from the perspectives of their establishment (section 1), governance, management, monitoring and oversight (section 2). It has also identified some 'promising practices' that could inspire the set-up and functioning of EUTFs (section 3). Finally, we have presented some general quantitative results of the EUTFs and the FRT, alongside a few qualitative case studies, and examined some of their overall consequences on EU foreign affairs policies and frameworks dealing with such sectors as development cooperation and migration management (section 4).

This study does not constitute an audit of results or a comprehensive evaluation of these funding instruments or the projects implemented. At a general level, the point of departure of the analysis is that the EUTFs put at risk the integrity of the EU budget and the democratic safeguards that govern it. The extra-Treaty policy frameworks and instruments (e.g. the EU–Turkey Statement or Valetta Declaration) and the coupling with extra-budget tools (EUTFs), brings bilateralism and 'intergovernmentalism' (outside the rationales of the Community method of cooperation) back into fields where the EU's role and policy were actually supposed to be consolidated and expanded under the Lisbon Treaty, particularly when securing the democratic control by the European Parliament and its role as 'co-owner' of EU policy in these domains.

The EUTFs and the FRT set up new governance procedures that deviate from the ordinary or regular decision-shaping and decision-making procedures, thereby inherently posing profound issues and potentially leading to more *mistrust* within the EU and when cooperating with third countries. Therefore, ultimately, they should be seen as exceptional or emergency-led instruments whose added value and effects on the ground should be very well justified and carefully monitored. Concretely, the conditions (necessity) for setting up the EUTFs should be more meticulously taken into account and assessed continually by the European Commission in light of EU Better Regulation guidelines and the Inter-Institutional Agreement.[195] Yet, it is questionable whether under the EUTFs and FRT the best available, most cost-effective implementing partner is always selected, or that EU visibility is ensured.

Recommendation 1

The European Commission should carry out a 'fitness check' under the EU Better Regulation framework, to assess whether the EUTFs and the FRT have met the criteria of effectiveness, efficiency, relevance, coherence and EU added value.[196]

As to the establishment and origins of the EUTFs and the FRT, section 1 of this study highlights that each has its own specific processes of birth and upbringing. One cannot easily compare the context for establishing the Bêkou EUTF – where the Central African Republic is mired in armed conflict and forced displacement – with the policy context for establishing the FRT as part of a 'deal' with Turkey on refugee reception and border management. Some of the aspects of the Constitutive Agreement for the Madad EUTF for the Syrian Crisis were highlighted as potential examples of good practice, namely in giving proportional voting rights to donors to the EUTF, not having the *a priori* preference for delegated

[195] See European Commission, "Better Regulation Guidelines", Staff Working Document, SWD(2015) 111 final, Strasbourg, 19 May 2015; see also European Commission, "Better Regulation Toolbox" (http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf); and the Inter-Institutional Agreement between the European Parliament, the Council of the EU and the European Commission on Better Law Making, OJ L 123/1, 12.5.2016.

[196] For more details, see https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf.

cooperation with Member States, and clearly arguing why it provides added value and complementarity.

The specificity of the FRT cannot be stressed enough, as it does not replace the existing governance structures of funding instruments, such as comitology. The EUTF for Africa was highlighted as an interesting case in section 1, as it has not become fully clear why an *emergency* EUTF is needed to address the 'root causes' of migration, or what 'emergency' it was seeking to address in the first place or where exactly. Rather a 'thematic' EUTF would have been more appropriate in light of the scope and intervention logic of the EUTF for Africa, even though that would have excluded delegated cooperation through Member States.

Recommendation 2

The European Commission should re-examine whether the EUTF for Africa was established correctly as an 'emergency' EUTF and should duly justify why it does not constitute a 'thematic' EUTF.

Section 2 outlines the governance, management, monitoring and oversight of the EUTFs. Clearly, the major deviations in comparison with regular EU external instruments concern governance. As the EUTFs set up new boards and Operational Committees, this changes the dynamics in selecting projects and implementing partners. The phase of needs identification is different too, because there is no programming as in the case of projects under regular external instruments. While this may enhance speed, it also renders the procedure somewhat opaque, with particular roles for Member States, EU delegations and Commission-led quality support groups. In addition, the recurrent dynamic of Member States' projects, lobbied for and not rarely involving their own implementing agencies, gives rise to questions over whether the selection process always safeguards a thorough and open-minded analysis of all the available options for implementation. The ECA in its Special Report on the Bêkou EUTF also rightly mentioned a 'conflict of interest' in the project selection procedure of the Operational Committee.

Recommendation 3

An express clause in EUTF constitutive agreements should be foreseen so as to explicitly exclude implementing organisations from the governance bodies.

Regarding management, in principle the Commission follows its regular rules and procedures. However, in management, the Commission is attempting to use all existing flexibilities when available. This also explains why for the post-selection phase (i.e. after the needs identification phase, once an action has been approved by an Operational Committee) it could not be established that the EUTFs carry out implementation more quickly than regular EU external funding instruments. Moreover, due to the issue also highlighted by the ECA in its Special Report on the Bêkou EUTF, the management fee of 5% does not include all management costs.

Together with the fact that delegated cooperation comes in principle with rather high overall management costs, it is not apparent *prima facie* that the EUTFs ensure a more cost-effective management structure than regular EU external funding instruments. The *a priori* preference given to implementation through delegated cooperation with Member States can be understood from the perspective of incentivising them to contribute to the EUTFs.

Recommendation 4

The EUTF constitutive agreements should exclude an *a priori* preference for delegated cooperation with Member States.

Our study shows that the EUTFs suffer from a number of *ex ante* deficits in democratic accountability. Through the comitology decision-making involved, the EP can voice its concerns, albeit on a limited basis (*ultra vires*). Where EDF-based EUTFs are involved, as in the EUTF for Africa, this option is not available, although EU budget instruments may later contribute to such EDF-established structures, for instance the DCI. The set-up of the EUTF for Africa could trigger a rethink of whether the existing procedures for establishing an EUTF should be redesigned and framed as a 'thematic trust fund'.

This EUTF (unlike all other EUTFs) goes beyond a typical 'crisis response' to a country/neighbouring region. It rather constitutes a near continent-wide instrument with large resources and with a distinguishable impact on the overall external relations on migration and development with Africa. Therefore, the EU principle of institutional balance should be better guaranteed here, potentially by demanding the establishment of a procedure where the EP would have the right of consent.

Recommendation 5

In light of the evolving practice of EUTFs, the procedures for establishing EUTFs should be rethought and fine-tuned, in order to include more venues for democratic accountability, preferably in the form of a right of consent or a right of scrutiny (or both) for the EP in the constitutive agreement.

The impact on fundamental rights needs to be taken fully into account when designing the EUTFs. The European Ombudsman has already concluded in relation to the EU–Turkey Statement and subsequent funding via the FRT, that when the EU goes abroad even via a political agreement, fundamental rights need to be respected. In addition, establishing such a large instrument should be subject to a proper ex-ante and ongoing/regular impact assessment, including on fundamental rights, in light with the good governance practices of the European Commission.

The projects financed can be prone to fundamental rights sensitivities and violations, and are generally likely to have an impact on human rights. It is therefore crucial that the EU better monitors and checks regularly and systematically whether the potential impacts of funded activities and projects on fundamental rights are identified and effectively mitigated by the European Commission in light of its formal responsibility of guarantor of the Treaties and the EU Charter of Fundamental Rights.

The European Ombudsman carried out an inquiry on the EU–Turkey Statement, calling for a fundamental rights impact assessment irrespective of the actual legal or political nature of the instrument at hand.[197] This fundamental rights impact assessment should also apply to the FRT if a real view of the Statement's implementation is to be taken on board, and more generally to the EUTF with

[197] Decision of the European Ombudsman on the joint inquiry into complaints 506-509-674-784-927-1381/2016/MHZ (2017), op. cit.

Africa. As the European Ombudsman has clarified, this process should not be a simple collection of data. Instead, the focus should be given to devising an analytical tool for ascertaining specific areas of fundamental rights and rule of law risks in a specific partner country's (national and local) regions during the course of a project's life, for example its effects on minorities or other vulnerable groups and communities.[198]

Recommendation 6

Due to the increased use of EUTFs, devising any kind of EUTF should be subject to an *ex ante and ongoing/regular* assessment of the impact on fundamental rights, when the EU goes abroad.

Building on the European Ombudsman's inquiry on the EU–Turkey Statement, in order to safeguard the principle of good administration laid down in Art. 41 of the EU Charter of Fundamental Rights, a fundamental human rights (ongoing) impact assessment of the FRT and EUTFs should be carried out regularly by the European Commission.

In addition, to ensure a more qualitative overview of the project's societal effects and human rights impacts, priority should be given to dedicating more tailored and direct funding to independent NGOs – not only as implementing partners of selected projects through national/governmental agencies, but also for their role in critically monitoring and conducting ongoing evaluation of the government policies of third-country partners, as well as their relations/intersections with EU-funded projects.

The 'ongoing' democratic accountability mechanisms of the EP could be strengthened with minimal harm done to the autonomy of the exercise of executive power by the Commission. The EP's de facto observer status in the EUTF boards is positive, and the Commission responds regularly to EP questions on EUTFs. The EP is not represented in the EUTF Operational Committees, where decisions on the actions to be financed are taken. This is understandable, as the Parliament is not part of the executive. Still, it would be possible to safeguard the EP's rights of information and of scrutiny, which it would normally have under the comitology structure for funding regulations. It may be possible to replicate the EP's comitology rights in the EUTF structures.

[198] As the European Ombudsman rightly stated in para. 29 of the above-mentioned Decision,

> *There is no universally held view on how human rights assessments should be conducted. There is however a common view that this tool is not intended to pass a judgment on the actual human rights situation or to decide which mitigating measure may be the most appropriate. In practice, this tool is used either in advance of an agreement with a likely impact on human rights, or after such an agreement has been put into operation, or both. The Ombudsman has already defined her understanding of human rights impact assessment. In her decision on Complaint 1409/2014/MHZ, concerning the Commission's failure to carry out a human rights impact assessment of the free trade agreement between the EU and Vietnam, the Ombudsman pointed out that the human rights impact assessment is not a simple collection of data or a response to public opposition, but rather an analytical tool for demonstrating that all the necessary factors and circumstances have been taken into account in framing a policy. The human rights impact assessment tool identifies the sources of risks and human rights on the affected stakeholders at each stage of the project's life. Its role is preventive in the first place because when negative impacts are identified, either the negotiated conditions need to be modified or mitigating measures have to be decided upon.*

Refer also to the World Bank (http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf).

Recommendation 7

The EUTF decision-making procedures of Operational Committees on financing actions should include a right of information and a right of scrutiny for the EP, as those under comitology.

The EP has more opportunities for ensuring *ex post* democratic scrutiny over EUTFs. The main accountability venues here are the discharge procedure and right for the EP to request the winding-up of an EUTF. The interplay between *ex post* and *ex ante* scrutiny, using both in different stages and by linking dossiers, can provide a way for the EP to address some of the current democratic accountability deficits. For example, general discharge procedures pertaining to the Commission and EDF should be better used, to provide for *ex post* oversight (see subsection 2.3.3). In addition, the procedure linked to the special reports produced by the ECA on EUTFs (ex-post) could be further explored so as to link *ex ante* democratic accountability (see recommendation 7 above).

A further number of monitoring and oversight frameworks exist, as would normally apply, such as external audits. The ECA also plays a crucial role, with two more special reports planned for 2018, on the EUTF for Africa and the FRT. The Commission has a whole set of internal checks that apply, such as the 'pillar' assessment of entities carrying out indirect management. The study showed that the different EUTFs and the FRT are each developing results-monitoring frameworks, some of them promising, with different systems, apps and websites. It would be advisable for the Commission to share more of these experiences and potentially identify best practices in results monitoring, to be implemented consistently across the EUTFs and the FRT. This would also mitigate the issue of different reporting procedures across EUTFs and the FRT.

Recommendation 8

Instead of developing individual models for results-monitoring frameworks, the EUTFs and the FRT should exchange promising practices and decide on the implementation of a more harmonised model consistently applied across the EUTFs and the FRT.

This study has also looked at promising practices from the UN and World Bank's management of trust funds, as well as from the EUTFs. It should first of all be stressed that there is no easy comparison between those multi-donor trust funds and the EUTFs, and that the actual extent to which these practices are promising or not must be ultimately read from their transferability to the specificities characterising the EU legal system and its inter-institutional edifice.

There are certain features of the approaches by these international organisations that merit interest for better ensuring the effectiveness and robustness of monitoring and scrutiny procedures of trust funds. The UN example of having a dedicated MPTF Office that facilitates coordination and information sharing across different trust funds constitutes one of these. A similar dedicated office for EUTFs could help the development of results-monitoring frameworks, with trust funds that already have one sharing information with those that are still in the process of developing it (see section 2.4.1). Additionally, the UN MPTF Office has an online platform where harmonised financial and governance data of all its trust funds is published and updated daily. This may enhance financial transparency by enabling the public to access data about donations and transfers of funding and to compare trust funds.

Whereas financial management oversight would be more feasible for the EUTFs, the harmonisation of results monitoring would pose certain challenges. The practical challenges, such as different rules applicable to the EDF and non-EDF instruments, and different approaches by implementing Directorates-General, should be thought through. In addition, questions of language should be addressed, since for example, at the moment all the relevant information about the results of the EUTF for Colombia is in Spanish.

Recommendation 9

Following the UN's example, the European Commission should set up a dedicated EUTF office to share promising practices across EUTFs and ensure consistent governance and management, including on results-monitoring frameworks. A virtual EUTF gateway should also be set up, as a single EU portal on EUTFs with easy access to all data regarding the EUTFs' implementation and financial situations.

In the context of results-monitoring frameworks, it appears that the case studies presented for the UN and World Bank show a clearer definition of the trust fund objectives or common set of standards against which to measure results, which are aligned with broader strategies, e.g. the UN Sustainable Development Goals and national development strategies. By contrast, EUTF objectives are very broadly defined and they often lack clarity or legal certainty or a common EU understanding in line with EU general principles and fundamental rights obligations. This in turn makes the use of (output, outcome and impact) indicators a rather limited exercise from a methodological perspective when measuring actual results and impacts on the ground.

For example, the EUTF for Africa's objective of 'migration management' (and the more-for-more conditionality approach identified in this study for the case of Ethiopia) does not even have a firm consensus on its definition and may sit uncomfortably with development goals and fundamental human rights commitments of the EU and its Member States. The specific standards used by EUTFs to assess whether their actions work towards the achievement of an objective may need a more concrete specification. This would be the sine qua non condition for a comprehensive qualitative assessment of the project results and to ensure that project qualitative outputs may not run counter to other EU legal obligations and commitments.

The study has presented mainly a *quantitative* overview of the present approval, contracting and implementation status of the EUTFs and FRT. It has examined how funding is allocated among types of implementing partners and thematic areas or sectors of intervention. The analysis reveals that there is a common trend concerning the share of funding given to different types of partners. Indeed, in the Madad EUTF, the FRT and the EUTF for Africa, national organisations[199] receive the largest share of resources, followed by international development organisations, i.e. the UN and World Bank, with NGOs only coming third. The allocation in the Bêkou Trust Fund is different, as the largest share of funding is awarded to NGOs, followed by national organisations.

It should nonetheless be noted that this quantitative overview does not show the extra layers of implementation sometimes occurring, such as sub-contracting, or who performs the actual activities envisaged in a specific project on the ground. As mentioned in the introduction, this is not within the

[199] 'National organisations' include national ministries, national promotional banks and national bilateral and development agencies.

scope of our study. Yet, at a more general level, these funds constitute an important shift towards more Member State-led implementation, which in turn means a move away from UN organisations (agencies) with a circumscribed development and human rights mandate, and a closing space for NGO monitoring of potential irregularities, rule of law backsliding and fundamental rights violations. Nevertheless, it is often the case that the same UN agencies that are/were active on the ground are sub-contracted to implement some EUTF- or FRT-related actions.

The study has also examined the wider interactions of the EUTFs and the FRT with EU frameworks and policies. It has underlined that these new funding vehicles are always to be understood in the broader EU frameworks on external policies, such as those on development and on migration. Especially for the EUTF for Africa and the FRT, it is evident that they are linked to 'deals' with third countries, respectively the November 2015 EU–Africa Valetta Summit Declaration and the March 2016 EU–Turkey Statement. Both of their policy *raisons d'être* are thus outside the EU Treaties, rather to be found in a political 'declaration' or 'statement', beyond a formal international agreement or EU act.[200] This challenges the legal, institutional and democratic embedding that the Lisbon Treaty was supposed to bring to these fields of EU policy. The overall policy logics of the funding implicated (the EUTF for Africa and the FRT), as to both their establishment and how they figure in EU external relations, thus originate outside Treaty-based procedures.

The actual linking of the EUTF for Africa and the EU's Partnership Framework with African countries clearly ascribes the funding to a policy logic of more-for-more conditionality on migration management, such as on return and readmission. Although a minority of projects actually addresses this priority, the EUTF for Africa's funding is de facto used as conditionality leverage vis-à-vis African governments, as the case study of Ethiopia shows. This leads to concern about whether the EUTF for Africa is implemented as per its own objectives, or whether it is being instrumentalised to reach other objectives of EU external migration policies.

The EUTF for Africa also drives the conceptual shift in the 'migration and development' policy field, namely from a 'migration *for* development' to a 'development *against* migration' understanding. Apart from the fact that academic knowledge does not support a linear relationship between rising economic development and decreasing migration, it also changes the allocation rationale for development aid, namely towards the 'origins and routes' of migration.

For humanitarian aid, the implications of these funding vehicles provoke questions about how the humanitarian principles can be safeguarded. The involvement of humanitarian aid in the FRT, and especially the strong role of Turkey therein, challenges the purely needs-based character and the principles of neutrality, independence and impartiality.[201]

Recommendation 10

Special focus should be given to ensuring that the objectives of the trust funds are fully consistent with EU general principles and legal commitments laid down in the EU Treaties, and that they build 'partnerships' ensuring a balanced EU policy approach. Projects covering one area must not be inconsistent with (or run contrary to) other EU policies and objectives, including on democracy, the rule of law and human rights, as well as respect of UN principles and instruments.

200 Carrera et al. (2017), op. cit.

201 Joint Statement on the European Consensus on Humanitarian Aid (2008), op. cit.

In a nutshell, the realisation that the EU budget's resources are limited and reaching their boundaries should trigger a strategic process within the Commission and the European Parliament concerning what the 'exit strategy' from the increasing use of 'emergency funding' for cooperation with third countries on migration actually is. Continuing to rely on ever-increasing funding amounts to obtain cooperation with third countries in this field will prove unsustainable in the medium to long term. Over-reliance on third countries to solve internal EU policy dilemmas may in fact expose the EU to future 'crises' by making cooperation profoundly dependent on the political willingness and stability of the third-country governments and authorities concerned.

Lastly, as these EUTFs and the FRT are considered to be 'emergency tools' by their own logics, the European Commission should chart a path back to 'normality' and ordinary procedures as soon as possible. In light of the upcoming Multiannual Financial Framework negotiations and the revision of the Financial Regulation, the EU institutions should work together to preserve as much as possible the integrity of the EU budget, thereby foreseeing increasing possibilities *within* the EU budget structures to respond to any emergencies. This would reduce the need to set up instruments such as the EUTFs and the FRT, which despite their potentially valuable contributions, inherently pose challenges for the integrity of the EU budget, its democratic oversight and general EU principles, such as the one of inter-institutional balance. They also pose far-reaching issues for consistency in EU foreign affairs priorities, commitments and policies. All these steps are necessary ways forward in order to ensure that EU funding does indeed *enhance trust and not mistrust* within the EU and when cooperating with third countries.

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ANNEX 1. ANONYMISED LIST OF INTERVIEWEES

No.	Type of interviewee	Date
1	Interview with Commission (DG NEAR)	24.11.2017
2	Interview with Commission (DG DEVCO)	30.10.2017
3	Interview with Commission (DG DEVCO)	30.10.2017
4	Interview with Commission (DG DEVCO)	30.10.2017
5	Interview with Commission (DG NEAR)	10.11.2017
6	Interview with Commission (DG ECHO)	10.11.2017
7	Interview with Commission (DG NEAR)	10.11.2017
8	Interview with European External Action Service	9.11.2017
9	Interview with Commission (DG DEVCO)	7.11.2017
10	Interview with Commission (DG DEVCO)	7.11.2017
11	Interview with Commission (DG DEVCO)	7.11.2017
12	Interview with Commission (DG DEVCO)	7.11.2017
13	Interview with European External Action Service	6.11.2017
14	Interview with Commission (DG DEVCO)	9.11.2017
15	Interview with Commission (DG DEVCO)	9.11.2017
16	Interview with European Court of Auditors	8.11.2017
17	Interview with European Court of Auditors	8.11.2017
18	Interview with European External Action Service	16.11.2017
19	Interview with Commission (DG BUDG)	23.11.2017
20	Interview with Commission (DG DEVCO)	8.12.2017
21	Interview with Commission (DG DEVCO)	12.12.2017
22	Interview with Commission (DG DEVCO)	20.12.2017

This study provides a comparative assessment of the governance and oversight frameworks of selected EU trust funds (EUTFs) and the Facility for Refugees in Turkey (FRT). It explores how these EUTFs and the FRT add to and 'mix' the instruments set up under the EU Multiannual Financial Framework. It addresses the issue of their added value in light of the EU Better Regulation guidelines, their impact on the role of the European Parliament as a budgetary authority and the right to good administration. The study recommends reducing the complexity of the EUTF and FRT governance frameworks, and strengthening their consistency with the EU's cooperation efforts in third countries and EU Treaty values. Finally, it recommends reinforcing the venues for democratic accountability, fundamental rights and rule-of-law impact assessments, which are trust-enhancing.

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