

**AGREEMENT ESTABLISHING
THE EUROPEAN UNION REGIONAL TRUST FUND IN RESPONSE TO THE SYRIAN
CRISIS, 'THE MADAD FUND',**

AND ITS INTERNAL RULES,

hereinafter referred to as “the Constitutive Agreement”,

between

[names of donors]

collectively referred to as "**the Donors**" and individually as "**the Donor**"

and

**THE EUROPEAN COMMISSION
ON BEHALF OF
THE EUROPEAN UNION**

hereinafter "**the Commission**",

WHEREAS:

1. The Syrian conflict is having a devastating and lasting impact on Syria and across the region. As of November 2014, with the conflict in its fourth year, the needs of the affected populations are of an unprecedented scale. 12.2 million people inside the country – over half of the Syrian population – of which 7.6 million people are internally displaced, are in need of urgent assistance, and more than 3.2 million refugees, plus their overstretched host communities in neighbouring countries need help on a daily basis. The number of conflict-related deaths has surpassed 191,000 individuals and more than one million have been war-wounded.
2. The Syrian crisis evolved from initially peaceful protests for freedom and democracy that were brutally repressed by the Syrian regime towards a civil war, resulting in a prolonged and ever worsening humanitarian emergency, which today has transformed into a multidimensional and protracted political, security, and social crisis directly affecting Lebanon, Jordan, Iraq, Turkey and Egypt. These countries’ social and economic capacity to deal with the ever-growing influx of refugees is stretched to the limits. The generous hospitality of the host communities is now turning into growing

hostility, while additional refugee and internally displaced persons flows have been caused by the advance of ISIL in Iraq and Syria.

3. The neighbouring countries cannot cope with this massive refugee crisis in the medium to long term without significant additional support from the international community. Furthermore, experience shows that a return of refugees is often a long process even after a crisis ends, which calls for long-term sustainable solutions. This is especially true for Lebanon and Jordan. With their comparatively small population and limited resources, such a burden is posing a growing threat to these partner countries' economic, social and political stability. Turkey is also hosting a large refugee population, with an increasingly strong impact on public services and infrastructure in some areas.
4. In response, the European Union (EU) budget and Member States have so far mobilised EUR 2.9 billion since the start of the conflict (around EUR 1.5 billion from the EU budget and EUR 1.4 billion from Member States), making it the main world donor in addressing the consequences of this crisis. This assistance has allowed for urgent delivery of humanitarian assistance and supported the national and local capacities to deliver services for those affected by the crisis (education, health, basic services such as water and waste management services, support to livelihoods, etc.). However, the various EU instruments and Member States' programmes all work in parallel through various bilateral channels (United Nations (UN) agencies, Non-Governmental Organisations, national agencies, host country governments).
5. At the Kuwait 2 pledging conference in January 2014, the UN launched its biggest appeal ever amounting to USD 6 billion – a two-fold increase compared to the previous appeal for Syria - but managed to only raise over USD 2.9 billion so far. During the special meeting on Syria in the margins of the UN General Assembly in New York in September 2014, international donors pledged USD 1 billion towards the Syrian crisis response. Thus, the 2014 UN appeals for Syria are only funded at around half of what is needed. Without a further significant additional effort, the international donor community and host countries will be unable to respond adequately to the sharply increasing needs.
6. The EU is actively engaged in international outreach efforts to raise funds from other donors (for example the humanitarian "top donors group", the development "core donors" group, etc.) and to improve the cost-effectiveness of the international response through promoting a UN-led regional Comprehensive Regional Strategic Framework that would better link international humanitarian, development assistance and national response plans of host countries. The EU Foreign Affairs Council, in its conclusions on Syria of 21 October 2013 welcomed the creation of the Syria Recovery Trust Fund as an important step to ensure that the assistance needed by the people of Syria is properly delivered.
7. Without sufficient additional funding to at least maintain and stabilise the current engagement, the EU's contribution, relevance and leveraging capacity in the Syrian crisis would be severely undermined. Thus, the EU Foreign Affairs Council, in its Common Messages on the humanitarian aspects of the Syria Crisis of 21 October 2013, also stressed that the EU and its Member States should increase efforts to coordinate their response in a strategic and operational manner to avoid duplication

and to foster a more coherent and complementary approach and called on the Commission to take practical measures to that end.

8. The European Council, in its conclusions in December 2013 "*confirm[ed] the commitment of the EU to continue to mobilise adequate funding building on a comprehensive aid strategy, and call[ed] for further measures to improve the effectiveness of EU support*". The 14 April 2014 Foreign Affairs Council conclusions also stated that "*the EU pledges to continue its support to the governments and host communities of Syria's neighbours so they can deal effectively with the increasing flow of refugees and build up their resilience*" and that "*further to the Kuwait 2 conference in January 2014, the EU continues to mobilise humanitarian and development aid in response to the crisis and encourages partners to provide sustained financing for Syrian refugees and host communities.*" This comment was reiterated in the 20 October 2014 Foreign Affairs Council conclusions.
9. Article 187 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council¹, authorises the Commission to set up and manage a EU Trust Fund under an agreement concluded with other donors. These funds are designed to mobilise various sources of EU financing and to receive contributions from EU Member States and donors from non-member countries. EU Trust Funds have been specifically designed for emergency and post-emergency situations where experience has shown that the fragmentation and weakness of local actors together with the complexity of aid delivery in a crisis requires the international community to respond in a fully coordinated and joined-up manner to avoid duplication and loss of impact for an effective crisis response. The Joint HR/Commission Communication "Towards a comprehensive EU approach to the Syrian crisis" of 24 June 2013² already stated that a EU Trust Fund "*could be envisaged at a later stage as a vehicle for leveraging and coordinating contributions from all EU donors and other interested donors*".
10. All the conditions are met for the establishment of a EU Regional Trust Fund in response to the Syrian crisis (hereinafter referred to as "the Trust Fund"), which would allow the EU and the international community to respond collectively and coherently to the regional challenges, particularly those in Syria's neighbouring countries.
11. As regards its scope under Article 187 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council³, the Trust Fund would clearly cover an emergency, and potentially also a post-emergency scenario following a future resolution of the Syrian conflict, after which it could be used to coordinate and channel reconstruction funding.
12. Concerning the required added value to the Union intervention, the Trust Fund would bring a four-pronged added value compared to bilateral actions: First, it would allow – with additional funding from EU Member States and non-member countries – to create economies of scale that individual countries or organisations or the EU alone

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

² JOIN(2013) 22 of 24 June 2013.

³ See footnote 1.

cannot achieve, especially vis-à-vis the refugee host countries, the UN system and other players. Secondly, it would enhance the role of the EU in contributing to coordinating the international response. Thirdly, while other already existing Funds for the host countries only have national or sub-national scale and limited funding to offer, the Trust Fund would be the first (and possibly only) funding instrument with a regional scope responding to a regional crisis, thus providing the EU and donors with a strategic financing mechanism that can intervene flexibly and quickly in response to shifting needs during the crisis. Fourthly, it would provide the urgently needed sustainability and predictability of funding for what is going to be a medium to long term crisis response, while existing budgets, both at EU and at national level, are not equipped to respond to such a large and long-term crisis. The Trust Fund would also bring strong efficiency gains on the financial side, as it could operate with overhead costs of less than 5%, depending on the size of overall contributions.

13. As for advantages in terms of visibility and management, the Trust Fund would bring enhanced EU visibility as opposed to EU contributions to other Trust Funds both vis-à-vis the EU tax payer, the media, the beneficiary countries and their populations. The Trust Fund could also provide better control of risks and disbursements of the Union and other donors' contributions, especially when it comes to contributions from smaller donors who on their own would have much less monitoring capacity compared to the European Commission.
14. In terms of additionality, the Trust Fund would allow for pooling and tailoring resources and response at a regional level thus further enhancing strategic prioritization, coherence and coordination. It could also become a funding vehicle for a future post-conflict reconstruction effort already being operational when the time comes. It could provide a central platform for the response to the Syria crisis, covering several EU instruments as well as EU Member States and potentially also third donors' assistance, and this without necessarily requiring financial contributions from each instrument, EU Member State or donor. The Trust Fund thus provides a coherent response mechanism avoiding duplication, including between EU instruments, when responding to the needs of both refugees and host communities in a balanced and equitable way. It also offers the possibility to mix a comprehensive range of funding modalities (grants, budget support, delegated cooperation, etc.) adapted to each country or sector situation. For that purpose, existing and on-going EU, Member States' and other donors' aid programmes and projects need to be fully mapped where relevant against potential actions of the Trust Fund to ensure maximum synergies between the bilateral funding streams and the Trust Fund.
15. By Decision **C(2014) XXXXX of xx/xx/2014**, the European Commission decided to establish the European Union Regional Trust Fund in response to the Syrian Crisis (the "Trust Fund") and empowered the Director-General of the Directorate-General for Enlargement (Neighbourhood and Enlargement Negotiations as of 1 January 2015) to sign this agreement;
16. The Trust Fund is established under the European Neighbourhood Instrument (ENI)⁴. EU instruments currently used in response to the Syrian crisis, such as the

⁴ Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, OJ L 77, 15.3.2014, p.27.

Development Cooperation Instrument (DCI), the Instrument for Pre-Accession Assistance (IPA), the Instrument contributing to Stability and Peace (IcSP), the European Instrument for Democracy and Human Rights (EIDHR), and funding under Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid (Article 2d)) may contribute to the Trust Fund within the limits laid down in the multi-annual financial framework 2014-2020 and in accordance with Article 2 of the IcSP Regulation. Any humanitarian assistance under the Trust Fund shall be administered and provided in full respect for humanitarian principles and the European Consensus on Humanitarian Aid⁵.

17. The overall objective of the Trust Fund is to provide a coherent and reinforced aid response to the Syrian crisis on a regional scale, responding primarily in the first instance to the needs of refugees from Syria in neighbouring countries, as well as of the communities hosting the refugees and their administrations, in particular as regards resilience and early recovery. The Trust Fund will thus focus on current priority needs and may also be adapted to reconstruction needs in a future post-conflict scenario. Assistance inside Syria will be considered taking into account, and avoiding overlap with, the action of other existing international funding instruments, and depend on agreement with the Syria Recovery Trust Fund as set out in the provisions of this Agreement.
18. EU and international donor assistance through the Trust Fund shall enable a comprehensive response package commensurate to the challenges. This response package should contribute to mitigating the regional spill-over effects of the Syrian crisis. It should bring together funds and instruments of the EU, its Member States, and other donors in order to address the immediate needs in a coordinated and comprehensive manner, to promote access to justice and accountability, to preserve the stability of neighbouring countries and to contribute to longer term international reconstruction efforts once a lasting peace has been found.
19. In line with the Council Conclusions on the EU approach to resilience, activities financed by the Trust Fund shall pursue conflict-sensitive approaches across humanitarian, development and political dialogue and engagement, taking into account the wider root causes of conflict and chronic insecurity and the impact of these factors on the vulnerability of populations, and recognise the complementary roles of development cooperation, humanitarian action and political dialogue and engagement as essential components of building resilience and ensure that efforts to link relief, rehabilitation and development (LRRD) remain integral to such activities.⁶
20. The Trust Fund will pursue its objectives through the pooling of resources and of the existing but often scattered capacities of donors and agencies to analyse, identify and implement high-impact projects in the region. These pooled capacities will make a direct contribution to the identification of actions that will be presented to all contributors to the Trust Fund as part of a diversified portfolio.

⁵ [The European Consensus on Humanitarian Aid \[Official Journal C 25 of 30.1.2008\]](http://europa.eu/legislation_summaries/humanitarian_aid/ah0009_en.htm). See also: http://europa.eu/legislation_summaries/humanitarian_aid/ah0009_en.htm.

⁶ [Council conclusions on EU approach to resilience, 3241st Foreign Affairs Council meeting, Brussels, 28 May 2013.](#)

21. The geographical scope of the Trust Fund shall primarily cover Lebanon, Jordan, Turkey, Iraq, Egypt or any other country in the region affected by the Syrian crisis. Assistance inside Syria will be considered in accordance with Recital 17 and Article 2 of this Agreement.
22. The Trust Fund is open to financial contributions from the EU, all EU Member States and other donors wishing to contribute to the objectives of the Trust Fund.
23. The Trust Fund is established for a period of 60 months from the signature by the Representative of the European Commission, in order to provide a short and medium-term response to the Syrian crisis in the region. Given its regional scope, the security conditions on the ground in Syria, the fact that the EU Delegation in Damascus is still evacuated, and that there is no Head of the EU Delegation, the Trust Fund will be temporarily managed in Brussels in coordination with relevant EU Delegations.
24. It is necessary to establish the basic rules for the establishment, governance and administration of the Trust Fund in accordance with the provisions provided in Article 187 of the Financial Regulation of the European Union⁷ (the "**Financial Regulation**") and with the principles of economy, efficiency and effectiveness.

⁷ 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, p. 1.

IT IS HEREBY AGREED:

Part I – General Provisions

Article 1

Establishment of the Trust Fund

1.1 The Trust Fund in the sense of article 187 of the Financial Regulation, is hereby established between the Commission and the Donors to provide a coherent, comprehensive and joint aid response to the manifold and increasing needs arising from the Syrian crisis across the region. In accordance with the Financial Regulation, the Trust Fund shall, from the outset, be open to the participation of all Member States of the European Union and other donors, as defined below.

1.2 The Trust Fund is a fund of monies managed by the Commission, on behalf of the Donors and the European Union, under the responsibility of the authorising officer by delegation appointed by the Commission (the "**Manager**"), in accordance with the terms of the Constitutive Agreement. The Trust Fund shall not have legal personality.

Article 2

Objectives of the Trust Fund

The overall objective of the Trust Fund is to provide a coherent, coordinated and reinforced aid response to the Syrian crisis on a regional scale, responding primarily in the first instance to the needs of refugees from Syria in neighbouring countries, as well as of the communities hosting the refugees and their administrations, in particular as regards resilience and early recovery. The Trust Fund will thus focus on current priority needs and may also be adapted to reconstruction needs in a future post-conflict scenario. Assistance inside Syria will be considered taking into account, and avoiding overlap with, the action of other existing international funding instruments, and depend on agreement with the Syria Recovery Trust Fund as set out in Article 6.1.1 (d). The activities proposed to achieve these objectives are set out in Annex I to the Constitutive Agreement.

Article 3

Resources of the Trust Fund

3.1 General

The Trust Fund's operational resources shall consist of:

- (a) Contributions made by the Donors and by the European Union, pursuant to Articles 3.2, 3.3 and 3.5 respectively;
- (b) Any income that may be generated by the activities of the Trust Fund, including remuneration from investments made with funds on the Trust Fund's Account (as defined in Article 8.2.1);
- (c) Any unutilised funds returned to the Trust Fund upon completion of an action financed by the Trust Fund ("**Action**");
- (d) Any fund duly recovered by the Manager; and
- (e) Any donations made by individuals or private entities (without a public-service mission).

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

3.2 Contributions from Donors

3.2.1 The donors shall contribute funds (each a "**Contribution**") to the Trust Fund in accordance with the following provisions.

3.2.2 Each Contribution shall be made by a Donor or pool of Donors pursuant to a contribution agreement (the "**Contribution Certificate**") concluded pursuant to the form laid down in Annex III. Each Contribution Certificate shall be delivered by the relevant Donor to the Manager and shall specify:

- (a) the amount of the Contribution in euro or in any other currency, which will be converted into euro when cashed in the Trust Fund Account, referred to in Article 8.2.1, in accordance with Article 8.3;
- (b) the date or dates upon which the Donor shall make such Contribution available to the Trust Fund (the "**Contribution Payment Dates**"), in accordance with the rules set out in Article 3.3;

3.2.3 By delivery of a signed Contribution Certificate to the Manager:

- (a) the relevant Donor irrevocably undertakes to make the Contribution described therein available on the relevant Contribution Payment Dates; and
- (b) the relevant Donor adheres to the Constitutive Agreement.

3.2.4 Donors shall not place restrictions or conditions on the use of any Contribution beyond those set out in the Constitutive Agreement.

3.2.5 A Donor may at any time decide to make a new Contribution to the Trust Fund by delivering an additional Contribution Certificate.

3.2.6 Without prejudice to Article 3.6, the Manager should decide whether a new or additional Contribution may be accepted by the Trust Fund during the last year of the duration period provided for in Article 17.2.1(d).

3.3 Payment of Contributions by Donors

The donors shall pay their contribution(s) in euro or in any other currency in accordance with Article 3.2.2(a) to the Trust Fund Account referred to in Article 8.2.1 within four months of the date of signature of the Contribution Certificate. However, contributions of more than EUR 5 million can be paid in a maximum of three annual instalments, the first being within four months of the date of signature of the Contribution Certificate and the remaining instalments in accordance with the payment schedule specified in the Contribution Certificate.

3.4 The Manager's acknowledgment of the receipt of contributions

Following receipt of a signed Contribution Certificate, the Manager shall issue to each Donor a statement including:

- (a) the details of such Contribution, i.e. its amount and currency;
- (b) a table showing the aggregate amount of the agreed Contributions as well as the ones effectively received from each Donor and from the European Commission, and;
- (c) the voting rights thus acquired on the Operational Board pursuant to Article 6.4.1.

By issuing such statement, the Manager acknowledges its responsibility to use the funds in accordance with the Constitutive Agreement.

3.5 Contributions from the European Union

The European Union shall contribute to the Trust Fund in accordance with its financial rules and regulations and with the basic act used to finance the Trust Fund. Articles 3.2 and 3.4 apply *mutatis mutandis* to the European Union's Contribution.

3.6 New donors

The Trust Fund is open to contributions from EU Member States and, subject to Articles 5.2(d) and 3.1(a), to third countries and other donors. By contributing to the Trust Fund through signature of a Contribution Certificate, the aforementioned contributors shall (i) adhere to the Constitutive Agreement, and (ii) become a Donor in the sense of the Constitutive Agreement.

3.7 Contribution Certificates

All signed Contribution Certificates shall become part of Annex II.

Part II – Governance provisions

Article 4

The governance bodies of the Trust Fund

4.1 The following governing bodies of the Trust Fund are established by the Constitutive Agreement:

- (a) a Trust Fund Board which shall establish and review the overall strategy of the Trust Fund, and;
- (b) an Operational Board which shall decide on the allocation of funds to individual Actions.

4.2 The Manager shall ensure the secretariat of the Trust Fund Board and of the Operational Board and manage the implementation of the actions under the Trust Fund.

Article 5

Trust Fund Board

5.1 Composition of the Trust Fund Board

5.1.1 The Trust Fund Board is composed of representatives of the Donors, of the Commission acting on behalf of the European Union, and, as observers, of EU Member States that are not Operational Board Members (as defined in Article 6.1.1) as well as of a representative of the Syria Recovery Trust Fund under a condition of reciprocity ("**Observers**").

5.1.2 The Commission's representative to the Trust Fund Board shall chair the meetings of the Trust Fund Board ("**Chair**"), assisted by the Founding Members of the Trust Fund ("**Deputy Chairs**"). The Manager shall be represented in the meetings of the Trust Fund Board and shall provide the secretariat for the Trust Fund Board.

5.1.3 The Chair and the Deputy Chairs may decide to invite further observers to the meetings of the Trust Fund Board, as appropriate, in particular where they are concerned by the decisions to be adopted.

5.1.4 Each Donor, as well as the Commission, shall appoint a duly authorised representative, the "named" representative, and may further appoint one or two "alternate" representative(s), who shall attend in the event the named representative is unable to attend. A representative, except that of the Commission, may at the same time represent more than one Donor in the Trust Fund Board provided that the Donors concerned jointly notify the Manager in advance with a copy of the instrument of authorisation. The representatives may be accompanied by no more than one advisory staff. In addition, the Commission's representative shall be accompanied by a representative of the High Representative of the Union for Foreign Affairs and Security Policy.

5.1.5 No representative (or advisory staff) shall receive any form of remuneration from the Trust Fund. They shall bear all costs associated with their status, including all costs incurred by them in relation to travelling to and attending Trust Fund Board meetings.

5.2 Role and responsibilities of the Trust Fund Board

The Trust Fund Board:

- (a) will establish and review the overall strategy of the Trust Fund;
- (b) may deliver opinions on the Trust Fund's management to the Operational Board and Manager;
- (c) shall receive the Annual Report and the annual accounts; and
- (d) will decide on the accession of additional Donors other than EU Member states to the Trust Fund.

5.3 Meetings of the Trust Fund Board

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

5.3.2 Meetings of the Board shall in principle be held at the premises of the European Union in Brussels. On an exceptional basis, the Chair and the Deputy Chairs may propose to the Trust Fund Board that a meeting takes place in another location. The Trust Fund Board may meet by videoconference, conference call or any other remote communication system.

5.3.3 The Trust Fund Board may decide on its rules of procedure in line with the Constitutive Agreement. In the event of a conflict between the Constitutive Agreement and the rules of procedure, the Constitutive Agreement shall prevail.

5.4 Voting rights, Quorum, Voting Rules and Written Procedure

Trust Fund Board will seek to work on the basis of consensus. However, where a vote is required the following rules shall apply:

5.4.1 Each Donor has one (1) vote in the Trust Fund Board. The Chair has one vote and a veto right on the decisions to be taken by the Trust Fund Board in order to ensure that decisions are consistent with the law and principles of the European Union as laid down by the European Parliament and the Council of the Union, and satisfy the requirements of the Financial Regulation and the European Commission's responsibilities as Manager of the Fund.

5.4.2 The Trust Fund Board shall be quorate if the following conditions (a) and (b) are both satisfied:

- (a) the Donors in attendance account for at least one third of the Donors; and
- (b) the Chair and at least one Deputy Chair is present.

At the start of each meeting of the Trust Fund Board, the Chair shall establish whether the quorum is present.

5.4.3 In the event of a vote, each decision of the Trust Fund Board is subject to a simple majority rule.

Article 6

Operational Board

6.1 Composition of the Operational Board

6.1.1 The Operational Board is composed of:

- (a) the Commission's representative to the Operational Board, acting on behalf of the European Union, who shall chair the meetings of the Operational Board (the "**Chair**"), assisted by the Founding Members of the Trust Fund (the "**Deputy Chairs**");
- (b) a representative of each Donor or pool of Donors (the "**Members**"), who:
 - (i) has/have provided a signed Contribution Certificate for an amount of at least equal to the minimum Contribution of the equivalent of EUR 3 000 000; and
 - (ii) is current with all undertakings contained in the Contribution Certificate applicable to them;
- (c) observers invited by the Chair and the Deputy Chairs, as appropriate;
- (d) as a permanent observer, a representative of the Syria Recovery Trust Fund to ensure that the level of assistance the Trust Fund provides inside Syria is in agreement with the Syria Recovery Trust Fund. Each Action for assistance inside Syria adopted by the Operational Board in the presence of such fully and duly empowered representative of the Syria Recovery Trust Fund shall be considered as fulfilling the requirement of agreement with the Syria Recovery Trust Fund pursuant to Article 2 of this agreement, its recitals and annexes.

The Manager shall also be represented in the meetings of the Operational Board and shall provide the secretariat for the Operational Board.

6.1.2 Each Member, as well as the Commission, shall appoint a duly authorised representative, the "named" representative, and may further appoint one or two "alternate" representative(s), who shall attend in the event the named representative is unable to attend. A representative, except that of the Commission, may at the same time represent more than one Member in Operational Board provided that such Members notify the Manager in advance with a copy of the instrument of authorisation. The representatives may be accompanied by no more than one advisory staff. In addition, the Commission's representative shall be accompanied by a representative of the High Representative of the Union for Foreign Affairs and Security Policy.

6.1.3 No representative (or advisory staff) shall receive any form of remuneration from the Trust Fund. They shall bear all costs associated with their status including all costs incurred by them in relation to travelling to and attending Operational Board meetings.

6.2 Role and responsibilities of the Operational Board

The Operational Board is the body responsible for:

- (a) examining and approving Actions - which may be grouped in the form of a work programme – in accordance with Article 6.5;
- (b) reviewing the effectiveness of the activities financed with the resources of the Trust Fund taking into account the opinions issued by the Trust Fund Board and assessing the effectiveness of the internal control systems as well as the follow up of any observations by internal or external auditors;

- (c) approving the Annual Report in accordance with Article 7.2(e) and the annual audited accounts in accordance with Article 8.3.4 for transmission to the Trust Fund Board;
- (d) ensuring that appropriate visibility is given to the activities financed by the Trust Fund;
- (e) approving proposed amendments to the Constitutive Agreement, in accordance with Article 19; and
- (f) deciding upon the liquidation of the Trust Fund, in accordance with Article 17.2.

6.3 Meetings of the Operational Board

6.3.1 The Operational Board will meet several times yearly and as often as necessary. Meetings of the Operational Board may be called by the Chair at any time or at the request of at least two Members which account for not less than one third of the Members' voting rights at the date of the request.

6.3.2 The meetings of the Operational Board shall in principle be held at the premises of the Commission in Brussels. On an exceptional basis, the Chair may propose to the Operational Board that a meeting takes place in another location. The Operational Board may meet by videoconference, conference call or any other remote communication system.

6.3.3 The Operational Board may decide on its rules of procedure in line with the Constitutive Agreement. In the event of a conflict between the Constitutive Agreement and the rules of procedure, the Constitutive Agreement shall prevail.

6.4 Voting rights, Quorum, Voting rules and Written procedure

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

6.4.1. Each contribution of not less than the amount specified in Article 6.1.1(b)(i) shall entitle the relevant member to a number of votes on the Operational Board established as follows:

- For a contribution of up to EUR 15 000 000, one vote is accorded for each tranche of EUR 1 000 000.
- For a contribution of over EUR 15 000 000, 15 votes are accorded, plus one vote for each additional tranche of EUR 5 000 000 up to the amount of EUR 50 000 000.
- For a contribution of over EUR 50 000 000, 22 votes are accorded, plus one vote for each additional tranche of EUR 10 000 000.

The voting right(s) is/are granted on the basis of the amount specified in the Contribution Certificate. It/They take(s) effect from the date of the first Operational Board meeting following the reception by the Manager of the Member's first payment, and is/are valid for a period of three (3) years, or until the liquidation of the Trust Fund if the latter should occur beforehand.

The same rule applies to the Commission's Contribution. However, the Commission, as Chair, has a veto right for the decisions on the use of the funds as specified in Article 5.4.1.

6.4.2 The Operational Board shall be quorate if the following conditions (a), (b) and (c) are all satisfied:

- (a) the Members in attendance account for at least one third of the Members;
- (b) the Members in attendance represent one third of the total voting rights at the time of the meeting; and

(c) the Chair is present.

At the start of each meeting of the Operational Board, the Chair shall establish whether a quorum is present.

6.4.3 Without prejudice to Article 19, in the event of a vote, each decision of the Operational Board subject to a simple majority rule.

6.4.4 On an exceptional basis, for any urgent issue concerning the Trust Fund, at the initiative of the Chair, the Operational Board may be consulted and take decisions, via tacit written procedure. Such decisions shall be deemed approved unless at least one third of the Members which account for not less than one third of voting rights reject the proposal within five (5) working days following receipt of the written request for a decision accompanied by the relevant supporting documents. Any such rejection shall be by written notice to the Chair of the Operational Board. Upon receipt of such a rejection, the Chair may call for a meeting of the Operational Board to discuss relevant resolution. The Chair informs the Members on the outcome of the written procedures in writing. All comments under written procedures by all Members shall be copied to all other Members. The Manager is responsible for ensuring this is carried out.

6.5 Approval of actions

6.5.1 To be financed by the Trust Fund, Actions must be previously approved by the Operational Board, except for Actions below EUR 1 000 000, which may be decided by the Manager alone and which will be communicated immediately to the Operational Board, in light of the objectives of the Trust Fund in Article 2 and the eligibility criteria contained in Article 9.1, and to the extent that sufficient uncommitted Trust Fund monies remain available in the Trust Fund Account (as defined in Article 8.2.1). Each Donor may propose actions to the Manager for submission to the Operational Board provided that they fall within the remit of the Trust Fund and comply with guidelines laid down by the Board.

6.5.2 The Manager shall submit for approval by the Operational Board one or more proposed Actions. The information concerning each proposed Action shall take the form of a short document ("**Action Document**", the form thereof shall be as set out in Annex IV), containing key information for each Action, such as aid modality, calendar, estimated budget, etc. The Manager shall present these Action Documents during the relevant meeting of the Operational Board.

For actions where the implementation of tasks is delegated to a third entity (the "**Implementing Partner**"), the Action Document shall indicate the name of the Implementing Partner or, where still not identified, the type of organisations envisaged and the criteria to be applied to select them.

6.5.3 Once an individual Action is approved by the Operational Board, it shall be implemented in accordance with the Action Document. If, during the implementation phase, substantial change⁸ in the characteristics of the Action is required after its approval by the Operational Board, the Manager shall present to the Operational Board for approval the

⁸ Cumulated changes of the allocations in a work programme, or an individual action if this is adopted independently from the work programme, not exceeding 20% of the maximum allocation to the work programme or individual action shall not be considered substantial, provided that they do not significantly affect their nature and objectives. This may include an increase of the maximum allocation to the work programme or individual action by up to 20%.

consequent modification of the relevant Action Document reflecting those changes, prior to their implementation.

Where, in exceptional cases of extreme urgency, changes need to be introduced in an Action, the Manager may modify the Action Document and inform immediately the Operational Board, which may oppose such modification in a time period of ten working days since the information has been notified to it.

Article 7

Management of the Trust Fund

7.1 General

The Commission, under the responsibility of the authorising officer by delegation duly appointed by the Commission, is the Manager of the Trust Fund. The accounting officer of the Commission shall be the accounting officer of the Trust Fund (the "**Accounting Officer**").

7.2 Role of the Manager and of the Accounting Officer

The Commission, in its role as Manager and/or Accounting Officer of the Trust Fund, shall be responsible for the following tasks according to their respective areas of responsibility:

- (a) providing the secretariat for the Trust Fund Board and the Operational Board, including documentation and logistics;
- (b) ensuring the Trust Fund's Financial Management in accordance with Article 8 and providing all the information needed for the establishment of the financial statements;
- (c) managing the implementation of the Actions, directly or indirectly through Implementing Partners, in accordance with Article 10;
- (d) by 15 February of each financial year, preparing the provisional accounts which should comprise:
 - (i) the annual financial statements, prepared in accordance with Article 8.3.4(b);
 - (ii) the annual financial report on the activities financed by the Trust Fund, prepared in accordance with Article 8.3.4(a);
- (e) preparing an Annual Report on the activities financed by the Trust Fund, their implementation and their performance, including the results of controls and the efficiency and effectiveness of the internal control system and the provisional accounts, which should be approved by 15 February of each financial year by Operational Board and subsequently submitted to the Trust Fund Board;
- (f) preparing and submitting the final annual accounts to the Operational Board, for their approval by 15 June of each financial year, and subsequently to the Trust Fund Board, the European Parliament and the Council of the European Union, in accordance with Article 8.3.4(c);
- (g) preparing 6-month and annual financial reporting in accordance with Article 8.3.4(a);
- (h) delivering copies of the Annual Report, annual accounts and, as soon as same are available, the financial reporting on the Trust Fund's operations, to each Donor;

- (i) preparing annual, or where appropriate, semi-annual, disbursement forecasts of the Trust Fund;
- (j) making available to the Donors, upon reasonable requests, all relevant financial information. Should a Donor request substantial volumes of financial information, the Manager will be entitled to require a contribution to the costs from the requesting Donor, based upon agreed calculations.
- (k) deciding on the financing of Actions below EUR 1 000 000 in accordance with Article 6.5.1.

7.3 Management fee

The Commission is authorised to withdraw a fee corresponding to maximum 5% of the amounts pooled into the Trust Fund to cover its management costs from the years in which the Contribution is to be used. This fee shall be assimilated to external assigned revenue to the EU budget.

These management costs shall be no more than:

- 4.5% for total contributions to the Trust Fund exceeding EUR 50 000 000;
- 4% for total contributions to the Trust Fund exceeding EUR 100 000 000;
- 3.5% for total contributions to the Trust Fund exceeding EUR 150 000 000.
- 3% for total contributions to the Trust Fund exceeding EUR 200 000 000.

7.4 Liability of the Commission

7.4.1 The Commission shall exercise the same level of care in the discharge of its functions under the Constitutive Agreement as it exercises in the management of its own affairs.

7.4.2 The obligations of the Commission in respect of the Trust Fund and the Donors are limited to those expressly stated in the Constitutive Agreement.

Part III – Financial and implementation provisions

Article 8

Financial management of the Trust Fund

8.1 Financial Management of the Trust Fund

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

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

8.1.3 The Manager shall fulfil this role by:

- (a) setting up and ensuring effective and efficient internal control systems throughout the duration of the Trust Fund;
- (b) making available the resources required to administer the Trust Fund;
- (c) communicating, to the extent necessary to fulfil its managerial role, with Donors;
- (d) ensuring sound financial management, including proceeding with recovery where necessary.
- (e) preparing the annual report of the activities funded by the Trust Fund (Article 7.2(e)) for approval of the Operational Board.

8.2 Treasury Management

8.2.1 The Accounting Officer shall be in charge of the treasury management and of the bank accounts of the Trust Fund. The Accounting Officer shall open at least one interest-bearing bank account in the name of the Trust Fund ("**Trust Fund Account**"). The interests accumulated on the Trust Fund's specific bank account will be apportioned twice a year and will constitute the sole remuneration for any funds on the Trust Fund Account(s). This remuneration takes into account the liquidity and transformation risk assumed by the Commission in its investment activity to meet at any time the liquidity requirement for the management of the Trust Fund Account.

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

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

8.3.1 The Accounting Officer shall maintain separate accounts in its books for the Trust Fund in which it will record the receipt of Contributions, the disbursement of the monies to approved Actions, all remuneration received and payment of the Manager's management fee and all other operations affecting Trust Fund resources. The Accounting Officer shall maintain the Trust Fund Account(s) in euro and in accordance with the accounting principles that it follows in respect of its own actions. Whenever it shall be necessary for purposes of preparation or presentation of financial statements to determine the value of any currency in terms of another currency or of the euro, the Accounting Officer shall make the valuation following its standard practice. Contributions will be taken into account when cashed in the Trust Fund Account for the amount in euro resulting from the conversion at their reception on the Trust Fund Account.

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

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

8.3.4 The financial reporting shall be prepared as follows:

- (a) The Manager shall prepare by 30 September of each financial year, a 6-month financial report on the Trust Fund's operations, and, by 15 February, an annual financial report.
- (b) The Accounting Officer shall prepare by 15 February the provisional annual financial statements.
- (c) Following preparation and auditing in accordance with Article 11, the Manager and the Accounting Officer shall prepare and submit the final annual accounts to the Operational Board, for its approval by 15 June.
- (d) All accounting records and financial statements shall be kept in euro.
- (e) The financial statements shall be prepared in accordance with EU accounting rules.

Article 9

Eligibility of the Actions and rules of nationality and origin

9.1 Eligibility of the Actions

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

9.1.1 The Action must fall under the geographical scope of the Trust Fund, which is primarily Lebanon, Jordan, Turkey, Iraq, Egypt or any other country in the region affected by the

Syrian crisis. Assistance inside Syria will be considered in accordance with Recital 17 and Article 2 of this Agreement.

9.1.2 The Action must contribute to the main objectives and purpose of the Trust Fund, as detailed in Annex I to the Constitutive Agreement.

9.1.3. The eligible sectors for Actions are as listed in Annex 1.

9.2 Nationality and origin rules

The rules applicable to the EU external action financing instruments contributing to this Trust Fund apply.

Article 10

Implementation of actions financed by the Trust Fund

After approval of an Action by the Operational Board, it shall be implemented in accordance with the implementing modalities provided for in the applicable Commission rules and regulations.

Part IV – Final provisions

Article 11

Protection of financial interest, audit and control

11.1. Protection of financial interests of the Trust Fund

The Manager shall take appropriate measures to ensure that, when Actions financed under the Trust Fund are implemented, the financial interests of the European Union and the Donors are protected by the application of preventive measures against irregularities, fraud, corruption and any other illegal activities, by effective detective controls and, if irregularities, fraud, corruption or any other illegal activities are detected, by the recovery of the amounts wrongly paid. The contracts and agreements signed with third parties shall provide the possibility for the Commission to carry out controls on the spot of the beneficiary, to suspend payments and implementation of actions in case issues of irregularities, fraud or corruption arise during implementation, to recover amounts wrongly paid and to apply, where appropriate, effective, proportionate and deterrent contractual penalties.

OLAF shall exercise the same powers over the Trust Fund in its entirety, which includes its governance bodies and the representatives of Donors and Observers participating in such bodies, as it does in respect of the other actions carried out by the Commission.

11.2 Audit

11.2.1. The Trust Fund, including the operations financed by it, shall be subject to an independent external audit every year. The costs of such external audit shall be borne by the Trust Fund.

11.2.2. The internal auditor of the Commission and the European Court of Auditors shall exercise the same powers over the Trust Fund in its entirety as they do in respect of the other actions carried out by the Commission.

11.3 Control

11.3.1. The Commission shall set up and ensure the functioning of an effective and efficient internal control system to provide reasonable assurance that the internal control objectives are met as provided for in Article 32 of the Financial Regulation.

11.3.2 The Manager shall, until at least five years after the termination of the Trust Fund as specified in Article 17.2:

- (a) keep financial accounting documents concerning the activities financed by the Trust Fund, and;
- (b) make available to the Donors, upon reasonable request, all relevant financial information. Should a Donor request substantial volumes of financial information, the Manager shall be

entitled to require a contribution to costs from the requesting Donor, based upon agreed calculations.

11.4 Access by European Union institutions and bodies

11.4.1. The Manager, the Implementing Partners and the entities benefiting from funds from the Trust Fund shall ensure that the staff and authorised agents of (i) the European Court of Auditors, (ii) OLAF, and (iii) any other competent European Union institution or body have access to such documents and information in relation to the utilisation of Trust Fund resources as are necessary to enable such bodies to perform their obligations under European Union law, in full respect of international law and of the agreements concluded between the European Union and the Implementing Partners in this regard.

11.4.2 All agreements and contracts resulting from the implementation of the Constitutive Agreement shall expressly empower the staff and authorised agents of (i) the Commission, including OLAF, (ii) the European Court of Auditors, and (iii) any other competent European Union institution or body to conduct audits, on-the-spot checks and/or inspections.

11.4.3. The Manager shall make available the annual accounts and the Annual Report to the European Parliament and to the Council of the European Union in accordance with Article 7.2.

Article 12

Visibility

12.1. Every Implementing Partner and entity benefiting from funds from the Trust Fund shall take all appropriate measures to publicise the fact that an Action has received funding from the Trust Fund including inclusion of appropriate clauses in the relevant financial documentation according to the Commission Communication and Visibility Manual for EU External Actions⁹.

12.2. The Donors accept that the Manager publishes in any form and medium, including on its website, the name and address of the Donor, the purpose of the Contribution as well as the amount contributed.

12.3. The Manager may use funds from the Trust Fund to ensure the visibility of the Trust Fund's Actions.

⁹ <http://ec.europa.eu/europeaid/work/visibility>.

Article 13

Evaluation and monitoring

The Trust Fund and the Actions financed by it will be subject to the monitoring and evaluation rules applicable to EU external programmes, in order to ensure the respect of the principles of economy, efficiency and effectiveness.

Article 14

Access to documents and confidentiality

The access to documents of the Trust Fund shall be governed by Regulation (EC) No 1049/2001¹⁰.

The Donors and the Manager undertake to preserve the confidentiality of any document, information or other material submitted by them or by any third party with the request to treat it as confidential, until at least five years after the date of termination of the Trust Fund pursuant to Article 17.

Article 15

Conflict of interests

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

Article 16

Ownership and use of results

16.1 Without prejudice to the relevant provisions of the contracts and agreements to be signed by the Manager for the implementation of the Trust Fund, the ownership, title and industrial and intellectual property rights in the results of the Trust Fund or the Actions financed by it, and in the reports and other documents relating to it, shall vest in the Trust Fund, as the case may be together with third parties or as may otherwise be decided by the Manager.

¹⁰ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

16.2 Notwithstanding the provisions of Article 16.1 and subject to Article 14, the Operational Board may grant the Donors the right to use free of charge and as they see fit all documents and other results deriving from the Trust Fund and the Actions financed by it, whatever their form, provided they do not thereby (i) breach existing industrial and intellectual property rights, or (ii) damage the interests of the Trust Fund or its Donors, or those of the European Union.

Article 17

Entry into force and duration of the Trust Fund

17.1 Entry into force and commencement of activities

17.1.1 The present Agreement shall enter into force between its signatories at the date of its signature by the representative of the European Commission, on behalf of the European Union, and at least one Donor.

17.1.2 The Trust Fund shall commence its activities when Contribution Certificates representing Contributions for a total amount of at least EUR 10 000 000 have been delivered by Donors in accordance with Article 3.2.

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

17.2 Liquidation of the Trust Fund

17.2.1 The Trust Fund shall continue until the earlier of the following (each a "**Termination Event**"):

- (a) there are no longer funds available or committed on the Trust Fund Account;
- (b) the Operational Board determines that the Trust Fund should be wound up;
- (c) the European Parliament and/or the Council of the European Union request the liquidation of the Trust Fund in accordance with Article 17.2.2;
- (d) the expiry of the duration of 60 months as of the signature of this agreement. This duration may be extended by a decision of the Commission upon request of the Operational Board.

The Trust Fund Board shall be informed of such Termination Event.

17.2.2 The European Parliament and/or the Council of the European Union may request the Commission to discontinue appropriations for the Trust Fund or to revise the Constitutive Agreement with a view to the liquidation of the Trust Fund, where appropriate. The Trust Fund Board shall be informed of such request.

17.3 Disposal of Resources on liquidation of the Trust Fund

Upon the occurrence of any of the Termination Events provided for in Article 17.2, the following provisions shall apply with respect to the resources of the Trust Fund:

- (a) The Manager shall not commit to any further activities relating to such resources, except those necessary to the orderly realisation, conservation and preservation of such resources and the settlement of the direct or contingent obligations to which they may be subject;
- (b) The Manager shall establish appropriate financial statements, which shall be subject to the audit procedure referred to in Article 11. These audited financial statements shall then be submitted to the Operational Board for approval.
- (c) The Manager shall submit the Operational Board's proposal concerning the liquidation of the Trust Fund to the Commission for final decision.
- (d) The Operational Board will discuss possible uses of the funds available and not yet committed at the time of liquidation. Any remaining funds shall be returned on a pro rata basis to the Commission, as general revenue, and to the Donors.

Article 18

Suspension and force majeure

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

18.2 The implementation period of a suspended Action is automatically extended by an amount of time equivalent to the duration of the suspension. This is without prejudice to any modification to the suspended Action which may be necessary to adapt it to the new implementing conditions.

18.3 Neither of the parties shall be held liable for breach of its obligations under the Constitutive Agreement if it is prevented from fulfilling them by force majeure. Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the Constitutive Agreement, was not attributable to error or negligence on their part (or of their partners, contractors, agents or employees), and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as force majeure by the defaulting party. Without prejudice to Article 18.2, the party invoking force majeure shall notify the other without delay, stating the nature, likely duration and foreseeable effect, and take any measure to minimise possible damage.

Article 19

Amendments to the Constitutive Agreement

19.1 Amendments to the Constitutive Agreement

Article 2 may be amended by a unanimous decision of the Trust Fund Board.

Articles 5, 6 and 19 may be amended at any time only by a unanimous decision of the Operational Board upon a proposal made by the Manager or of any Member.

The other provisions of the Constitutive Agreement may be amended at any time by a two-thirds majority decision of the Operational Board upon a proposal made by the Manager or of any Member, provided that the Chair casts a positive vote.

The Trust Fund Board shall be informed of such modification.

19.2 Annexes II and III

The model of Donors' Contribution Certificate provided for in Annex III is annexed to the Constitutive Agreement for information purposes only. It does not constitute an integral part of this Agreement and may be modified by the Manager unilaterally. By derogation from Article 19.1, the Signed Contribution Certificates in Annex II cannot be amended except as foreseen in Article 3.6.

Article 20

Withdrawal from the Trust Fund

Each Donor may decide to withdraw from the Trust Fund with one month's written notice to the Manager. Once effective, this will result in the cancellation of any rights and obligations of that Donor under the Constitutive Agreement, except those set forth in Article 3.2. Observers shall inform the Manager of their intention to discontinue their attendance.

Article 21

Applicable law and jurisdiction

20.1 The Contributions and the Trust Fund are governed by the terms of the Constitutive Agreement, by the applicable EU legislation and by the general principles common to the laws of the EU Member States.

20.2 The affected Parties will enter into consultations at the request of either party should any dispute arise concerning the interpretation, application or fulfilment of the Constitutive Agreement, including its existence, validity or termination.

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

20.4 Nothing in the Constitutive Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party hereto by its constituent documents or international law.

Article 22

Annexes

The following documents are annexed to the Constitutive Agreement and form an integral part of it:

- Annex I: Detailed description of the objectives and purpose of the Trust Fund
- Annex II: Signed Contribution Certificates
- Annex III: Model of Donors’ Contribution Certificate
- Annex IV Form of Action document

Done in [Brussels] in (as many originals as parties to the Agreement + 1) originals in the English language, two for the Commission and one for each Donor.

FOR THE EUROPEAN COMMISSION

[Name and title of the individual authorised to sign]

[Signature]
[Date]

FOR THE DONOR (2)

[Name and title of the individual authorised to sign]

[Signature]
[Date]

FOR THE DONOR (1)

[Name and title of the individual authorised to sign]

[Signature]
[Date]

FOR THE DONOR (3, etc.)

[Name and title of the individual authorised to sign]

[Signature]
[Date]