

TREATY ESTABLISHING A UNION FOR CLIMATE AND BIODIVERSITY

providing for the establishment of a European Climate and Biodiversity Bank
and a European Climate and Biodiversity Fund

CLIMATE-FINANCE PACT

THE ESSENTIALS IN THE TREATY PROJECT

The Climate-Finance Pact is a historic opportunity to jointly address the climate crisis, the lack of quality jobs and doubts about the European project. It includes two tools: the European Bank for Climate and Biodiversity and the European Fund for Climate and Biodiversity. The draft treaty that we propose has no other purpose than to serve as a support for negotiations between the Member States, like the Global Environment Pact, proposed in 2017 by a French think-tank and which is currently under negotiation at the United Nations.

1. CREATING A "EUROPEAN BANK for CLIMATE AND BIODIVERSITY" (EBCB)

1.1 LEGAL FRAMEWORK

The Pact plans to establish a subsidiary of the European Investment Bank (EIB) with legal personality and financial autonomy. Article 28 of the Protocol (No. 5) annexed to the Treaty on the Functioning of the European Union provides for the possibility for the EIB to create such a subsidiary, upon the decision of the Board of Governors of the EIB. It is on this basis that the European Investment Fund was established in 1994, to foster increased support for small and medium-sized enterprises.

1.2 OPERATIONS

The Statutes of the European Bank for Climate and Biodiversity as drafted by the group of lawyers responsible for the preparation of the Pact stipulate that this instrument should have only one objective, both simple and operational: to promote "the transition towards an energy-efficient and low-carbon economy by protecting biodiversity "(Article 2, Statutes of the Bank for climate and biodiversity). Its resources and its instruments are exclusively directed towards this long goal term. Its low rate loan policy provides an opportunity for investment in favour of employment. The statutes present a typology of the authorized operations, such as the insulation of buildings, the development and diffusion of renewable energies, the support for productive and ecological investment in the transport sectors or the promotion of agro-ecology (Article 12). Each state would have a drawing right of 2% of its GDP per year. This would for example represent 65 billion euros for Germany or 45 billion euros for France each year. Following the model of the European Investment Fund, we propose that 60% of the capital of the European Bank for Climate and Biodiversity be held by the EIB, 10% by the European Union and the remaining 30% by the Member States which wish to engage in this process. The statutes provide for the possibility, if useful for the climate, of financing projects outside the territory of the European Union by decision of the General Assembly.

1.3 GOVERNANCE

In addition to a Board of Directors and a General Assembly whose powers are identical to those set out in the Statutes of the European Investment Fund, the governance of the European Bank for Climate and Biodiversity gives way to civil society. A Strategic Committee is created for this purpose. It will be an advisory body composed of representatives of NGOs, scientists, members of the European Committee of the Regions and the European Economic and Social Council. This committee will decide on the operations carried out and make recommendations at each decision level (Articles 27 and 28).

The Statutes provide that the Board of Directors shall make an annual report on the operations of the Bank (Article 22). An annual audit report of independent experts appointed by the Strategic Committee is also provided for (Article 31). The jurisdiction of the Court of Justice of the European Union is finally asserted, in the event of any dispute resulting from a decision of one of the organs of the European Bank for Climate and Biodiversity presumed to be contrary to the law of the European Union (Article 34).

2. CREATING A "EUROPEAN FUND for CLIMATE AND BIODIVERSITY" (EFCB)

A budget of unprecedented scale to drive European policies up to the challenge of climate change.

2.1 GOAL

While many initiatives and proposals have been formulated both by the Member States and by the Union's institutions, the idea of a European Fund for Climate and Biodiversity proposes an unprecedented ambition: to finance a budget of 100 billion euros per year, which would be solely for the ecological transition in Europe, Africa and all around the Mediterranean.

2.2 FINANCING A DEDICATED BUDGET

One of the political priorities is not to affect households or economic actors vulnerable to taxation. This fund would therefore be funded by a contribution from companies operating in the European Union. This contribution would take the form of a levy on pre-tax profits above a threshold of turnover. Small businesses and craftsmen would not be affected by this tax.

This contribution, to be incentivized, would be variable depending on the evolution of the carbon footprint of the company. This carbon footprint has been mandatory since Directive 2014/95 / EU on the publication of non-financial information. A company that would be able to reduce its carbon footprint would reduce its contribution to the European Fund for Climate and Biodiversity.

CLIMATE-FINANCE PACT

FOUR SCENARIOS TOWARDS THE ADOPTION OF THE FINANCE-CLIMATE PACT

SCENARIO A: A EUROPEAN REGULATION

The European Union is competent to set up environmental taxation on the condition of unanimity within the Council (Article 192 of the Treaty on the Functioning of the European Union). The budgetary risks inherent in climate change could be the basis for a unanimous decision by the states. Nevertheless, this option is unrealistic given the difficulties of unanimity.

SCENARIO B: AN ENHANCED COOPERATION

In the provisions laid down in particular in Article 20 of the Treaty on European Union, only 9 Member States are required to take the initiative for enhanced cooperation. The case-law of the Court of Justice of the European Union confirms that enhanced cooperation in tax matters is in line with EU law¹. Given that the European Fund for Climate and Biodiversity would finance investments related to the ecological transition, which represents a significant source of non-relocatable jobs, the benefits for the States participating in this enhanced cooperation could far outweigh the costs that this new taxation represents.

SCENARIO C: AN INTERGOVERNMENTAL AGREEMENT

The form of an intergovernmental treaty, outside the formal framework of the European Union treaties, seems the most realistic way. Such an intergovernmental treaty would be open to accession by all EU Member States, but does not prevent the rapid progress of a vanguard formed by a small number of countries.

The Treaty establishing the European Stability Mechanism (2012) is a credible precedent for an intergovernmental agreement compatible with the division of competences between the European Union and the Member States. The case-law of the Court of Justice also establishes that Union law does not preclude the conclusion of such an intergovernmental agreement². It should also be recalled that the Treaty establishing the Schengen Area (1985) has been ratified by only 5 states at its origin, before having 26 participating States to date.

SCENARIO D: A SIMPLE AGREEMENT ONLY TO SET UP THE BANK

In view of the divergences between Member States over the drawing up of a budget and its financing, it is proposed to commit the EU to a decision that does not require a new treaty: that the European leaders agree to give order to the ECB and the EIB to create a subsidiary called EBCB and ways to control its effects for climate and biodiversity. Part 1 of the project is then quite realistic.

Common to all four scenarios is the vote of the EIB Board of Governors for the creation of the European Bank for Climate and Biodiversity.

THREE MONTHS OF DEBATE

The draft Treaty, which was made public in Paris on February 19, was drafted by citizens, lawyers, bankers and senior officials who contributed to this work on a voluntary basis and in a personal capacity.

It is a Version 0. This work is solid but can obviously be improved. That's why it's going to be debated for three months.

This debate is open to all: citizens, NGOs, lawyers, parliamentarians ... By the end of May, three working days will be organized in Brussels, Berlin and Madrid.

In early June, a finalized version will be tabled in the European Parliament and sent to all Heads of State and government so that this Treaty is at the heart of the new legislature.

Debate on www.pacte-climat.eu

¹ ECJ, United Kingdom vs Council, case C-209/13, 30 April 2014.

² ECJ, Thomas Pringle vs Government of Ireland, case C-370/12, 27 November 2012.

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PREAMBLE

Member States:

1. Aware that « World peace cannot be safeguarded without making creative efforts proportionate to the dangers which threaten it » (Declaration of 9th May 1950 delivered by Robert Schuman)
2. Whereas today world peace is severely threatened by climate change and the collapse of biodiversity in a context of growing social inequalities;
3. Taking into consideration the numerous warnings from the scientific community about the consequences of climate change and the collapse of biodiversity, concerning in particular international migrations, the overturning of our lifestyles, economic and financial crises, and the weakening of our democracies and social cohesion;
4. Whereas there is an urgent need to slow down speculation and to strengthen our economies and our societies as a whole, and taking into consideration the repeated warnings that have been made by international financial institutions concerning the risk of a new financial crisis, deeper than that of 2008;
5. Recognizing that the creation of a very strong dynamic of job creation, through the ecological transition in Europe, could encourage other regions to follow the same path;
6. Aware that Europe is the main generator of greenhouse gas emissions but remains relatively protected from the consequences of the climate change, while African countries and those around the Mediterranean sea are already heavily affected by the consequences of current climate warming in spite of the fact that they have emitted far less greenhouse gases per capita
7. Whereas under the principle of fraternity and the principle of common but differentiated responsibilities, the people of Europe must propose a new and well-funded programme of cooperation to the people of Africa and around the Mediterranean, to fight together against climate change and the loss of biodiversity.

No lasting peace without social justice

8. Reaffirming the idea of the 1944 Philadelphia Declaration, according to which « lasting peace can be established only if it is based upon social justice »
9. Recalling that its authors, having experienced the 1929 crisis and the social crisis that followed, knew that precariousness and poverty may provoke a deep and lasting humiliation in hearts of millions of people and may lead to trivialization of evil, barbarism and even to war;

10. Noting that nowadays Europe is facing a level of inequalities and precariousness that drives a significant number of citizens to doubt the validity of the European construction and sometimes even the merit of our democratic institutions;

11. Whereas it is time to recapture the spirit of Philadelphia, to reaffirm the primacy of human dignity and social justice; considering that it is time to put finance at the service of economy and economy at the service of common good;

12. Aware that it is time to bring to life a new model of development which is able to conciliate well-being, social justice, tax justice, economic effectiveness and protection of the planet;

13. Noting that serious scientific studies insist on the urgent need for action and for a real transformation of our production system and our lifestyles;

14. Affirming that, by means of this treaty, European citizens decide to create the financial means needed to accelerate the fight against climate change and the protection of biodiversity strongly;

15. Affirming that they want to achieve this metamorphosis while progressing towards a higher level of social and tax justice;

DECIDE:

To create « the Union for Climate and Biodiversity » open to all the Member States of the European Union,

To propose the creation of the « European Bank for Climate and Biodiversity», as a subsidiary of the European Investment Bank (EIB), established with a separate legal personality and financial autonomy,

To create a budget, hereinafter called « European Fund for Climate and Biodiversity ».

PART I: EUROPEAN BANK for CLIMATE AND BIODIVERSITY

- (1) The Board of Governors of the European Investment Bank (hereafter referred to as "EIB");
- (2) Acting on the basis of article 28 of Protocol (N° 5) annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union;
- (3) Committed to support the European Union and the Member States in their commitment, expressed in the 2015 Paris Agreement, to contribute to the global objective of the international community to keep temperature increases well below 2°C in comparison to pre-industrial levels, while also pursuing efforts to limit the temperature increase to 1.5°C, and to set their own objectives within the United Nations Framework Convention on Climate Change (hereafter referred to as « UNFCCC ») to reflect the "highest possible ambition" referred to in the Paris Agreement (art. 4 (3));
- (4) Committed to support the objective of the European Union to reach a 20% cut in greenhouse gas emissions by 2020 compared with 1990, a 27% increase in total energy consumption from renewable energy, and a 27% increase in energy efficiency; and to make further progress by 2030 in order to arrive by that date at a reduction of 40% or more in greenhouse gas emissions compared with 1990, as announced in the 2015 framework of the UNFCCC as the Intended Nationally Determined Contribution submitted on behalf of the European Union and its Member States ;
- (5) Committed to support the Climate Action in Financial Institutions Initiative, launched on December 7, 2015 in the side-lines of COP21 and set to provide guidance to international financial institutions with the aim of integrating climate considerations across operations and disseminating examples of emerging practices ;
- (6) Committed to the goals set in the 1992 Convention on Biological Diversity seeking the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, thanks to appropriate access to genetic resources and appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding;
- (7) Aware, however, that the current efforts remain insufficient to meet these objectives, and that further action is required from the European Union Member States, notably by addressing perceived market gaps in the financing of climate and biodiversity related projects;
- (8) Aware, moreover, that in order to meet the 2030 targets the European Union has set for itself, further financing is required, in the transport sector, the energy and renewable energy sector, and the residential and services sectors;
- (9) Convinced that turning Europe into a highly energy efficient and low-carbon economy while protecting biodiversity will also strengthen the economy, create jobs and improve Europe's competitiveness, particularly in the area of renewable energy and more efficient modes of transportation and heating systems;
- (10) Decides hereby to establish the European Climate and Biodiversity Bank, as a subsidiary of the EIB with a separate legal personality and financial autonomy, and adopt the following Statutes:

STATUTES

TITLE I: PURPOSE, TASK AND MEMBERSHIP

Article 1

Establishment

A European Bank for Climate and Biodiversity, hereinafter called the "EBCB", is hereby established with legal personality and financial autonomy.

Article 2

Purpose

1. The purpose of the EBCB shall be to foster the transition towards a highly energy efficient and low-carbon economy while protecting biodiversity in the European Union, by leveraging the required financing for climate mitigation strategies.
2. Under the conditions set out in Article 13(1), the EBCB can contribute to such a transition outside the territories of the Member States of the European Union.

Article 3

Task and Activities

1. The task of the EBCB shall be to contribute to the achievement of the objectives of the European Union as set out, in particular, in article 191(1) of the Treaty on the Functioning of the European Union.
2. The EBCB shall pursue this task through activities consisting in the provision of finance, in particular in the form of loans, guarantees, participation in equity funds or directly in special purpose entities and other financial obligations in whatever form is legally permissible, to its members or to private or public undertakings.
3. The activities of the EBCB shall be based on sound banking principles or other sound commercial principles and practices as applicable.
4. The EBCB shall also have an advisory function to support public and private promoters in developing technically and economically viable projects and initiatives within the scope of ecological transition and sustainability. The EBCB shall also propose competence building and legislative assistance services to public authorities in order to foster a regulatory environment conducive of accelerated public and private climate investment. An advisory department shall be in charge of these tasks.

Article 4

Headquarters

The headquarters of the EBCB shall be in [Luxembourg] [Brussels] [Paris] [other]

Article 5

Membership

1. Membership in the EBCB shall be open to:

- the European Investment Bank,
- any European Union Member State,
- the European Union, represented by the European Commission,

2. Under the terms and conditions defined by the Board of Directors acting on a decision taken by the General Assembly, legal entities from the financial sector whose business objectives support the tasks of the EBCB may become shareholders of the EBCB without being granted membership.

TITLE II: CAPITAL

Article 6

Capital

1. The authorised capital of the EBCB shall be [four billion five hundred million Euro, divided into 4,500 shares each with a nominal value of one million Euro], open to subscription by the members of the EBCB and shareholders satisfying the criteria of Article 5 (2) of these Statutes.

2. The authorised capital may be increased by decision of the [Board of Directors] [General Assembly] acting [with a majority of 85% of the votes cast] [unanimously].

3. In the event of an increase in capital and subject to the conditions laid down by the [General Assembly] [Board of Directors] [Board of Governors of the EIB], each member shall have the option to subscribe to a fraction of the increase corresponding to the ratio which existed between the shares subscribed to by that member and the capital of the EBCB before the increase.

4. The members of the EBCB shall be liable for the obligations of the EBCB only up to the amount of their share of the capital subscribed and not paid in.

5. Besides equity capital, the EBCB can be funded through high credit quality bonds issuance on international capital markets.

Article 7

Subscription of shares

1. Subsequent subscription of shares shall take place on the terms laid down by the General Assembly; the price of such shares may not be less than par.

2. Share ownership by legal entities from the financial sector satisfying the criteria of Article 5(2) shall be limited to an overall ceiling set out by the General Assembly.

Article 8

Shares

1. The subscribed capital shall be paid in by [members] [and shareholders] [to the extent of [5%] on average of the amounts laid down in Article 6(1)].

2. Payments shall be made exclusively in Euro.

3. The share of a Member in the subscribed capital may not be transferred, pledged or attached.
4. In the event of an increase in the subscribed capital, the [Board of Directors] [Board of Governors of the EIB], acting [unanimously] [by qualified majority], shall fix the percentage to be paid up and the arrangements for payment.
5. Members of the EBCB may dispose of their shares by transferring them to another member. Should a member wish to dispose of its shares, it shall offer them to the EIB or, with the latter's consent, to any other member of the EBCB, or to a legal entity from the financial sector satisfying the criteria of Article 5 (2) of these Statutes.

Article 9

Rights attaching to Shares

Each share shall confer rights in respect to the ownership of the assets of the EBCB, the sharing of net profit and, where appropriate, the proceeds of liquidation pro rata to the number of existing shares.

Article 10

Payments by Members

1. The Board of Directors may require payment of the balance of the subscribed capital, to such extent as may be required for the EBCB to meet its obligations.
2. Each Member shall make this payment in proportion to its share of the subscribed capital.

TITLE III: OPERATIONS

Article 11

Recipient entities and use of resources

The resources and facilities of the EBCB shall be used exclusively to implement the purpose and to carry out the functions set forth in Article 2 of these Statutes.

Article 12

Operating principles

1. The action of the EBCB shall be consistent with the objectives set out in the EU Treaties and in secondary law, and pursued by the European Union under other Policy mechanisms.
2. To fulfil on a long-term basis its purpose of fostering the transition towards a highly energy efficient and low-carbon economy in the European Union, the EBCB shall assist the recipient [member countries][entities] in implementing projects:
 - i) To support the insulation of buildings, including private homes;
 - ii) To foster productive investment in transport and energy infrastructures, including electro-mobility and a more integrated urban transport system, in order to support a transition to an energy efficient and low-carbon economy in a competitive environment and improving standard of living and working conditions;

- iii) To support training and knowledge dissemination for the sustainable management of land, in particular through agro-ecological and diversified forms of farming, and to support farmers operating a shift from conventional to agro-ecological farming;
- iv) To promote research in new technologies in the relevant sectors such as, in particular, energy supply based on renewable energies and the development of affordable and integrated energy storage solutions, and transport, for the development of low-carbon alternatives at competitive cost levels;
- v) To support the introduction of the most promising innovations into market, thus overcoming the 'deployment deficit', for both technological and social innovations that contribute to the transition towards a highly energy efficient and low-carbon economy while protecting biodiversity;
- vi) To provide technical assistance for the preparation, financing and implementation of relevant projects, initiated at national, regional or municipal levels, or by private actors, including citizens-led transition initiatives and projects based on social innovations, in particular in the sectors of transport, energy, food;
- vii) To support the establishment and growth of networks of actors designing innovations for a transition to an energy efficient and low-carbon economy while protecting biodiversity, in order to accelerate collective learning and the dissemination of best practices;
- viii) To give support to economically viable projects involving more than one recipient member country and contributing to the transition towards a highly energy efficient and low-carbon economy;
- ix) To support the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources;
- x) Considered relevant by the EBCB authorities, in accordance with Article 2 of these Statutes, beyond provisions listed above.

3. The EBCB shall ensure that projects are economically viable and abide by a principle of territorial equity.

Article 13

Geographical Scope

1. The EBCB may conduct its activities in the territory of the Member States of the European Union [and in the European Economic Area].

2. Notwithstanding paragraph 1, the General Assembly may decide, based on a proposal by the Board of Directors and under the tasks entrusted to the EBCB by third parties in accordance with Article 14 of these Statutes, that the EBCB may conduct activities contributing to the fulfilment of such task outside the territories set out in paragraph 1 of this Article.

Article 14

Cooperation with Third Parties

1. The EBCB may accept the tasks of administering special resources entrusted to it by third parties, provided that they are compatible with its [purposes] [and task] [in accordance with provisions of Article 2 [and Article 3] of these Statutes], that they are entered in separate accounts and that they are adequately remunerated.

2. The EBCB may, within the terms of these Statutes, cooperate with all international organisations exercising their activity in areas similar to its own.

[3. The EBCB shall be entitled to raise funds by issuing financial instruments or by entering into financial or other agreements with [national organisations] [banking partners in the Member states of the Union] [financial institutions] [ESM members] [and other third parties].]

Article 15

Remuneration of the EBCB

1. The EBCB shall protect itself against exchange risk by including, in contracts for loans and guarantees, such clauses as it considers appropriate.

2. The EBCB shall execute its eligible debt and equity investments on a concessionary basis in function of prevailing market conditions or, where funded specifically from grant resources, on a zero-interest basis. The operations of the EBCB shall ensure its financial sustainability in order to attract and retain the highest possible credit rating.

TITLE IV: GOVERNANCE

Article 16

Management and Administration of the EBCB

The EBCB shall be managed and administered by the following [six] authorities:

- the General Assembly
- the Board of Directors
- the Chief Executive
- the Strategic Committee
- the Executive Committee

Article 17

General Assembly

1. The General Assembly of EBCB members ' shall be held [at least once] [twice] [three times] a year when convened by the Chairman of the Board of Directors. General Assemblies shall be held at the headquarters of the EBCB, unless another location is specified in the notice convening such meetings.

2. General Assemblies may also be convened at the request of one of the EBCB members and following a decision of the Board of Directors. A General Assembly shall be convened upon request of members whose shares represent 13 per cent or more of the subscribed capital, specifying the subject that is the cause of such request.

3. Decisions of the General Assembly may be taken by written procedure subject to the conditions and in accordance with the rules laid down in the Rules of Procedure.

Article 18

Participation - Representation - Quorum - Majority

1. All members of the EBCB shall be entitled to attend General Assemblies.

[2. Each Member State shall be represented by its Minister of Finance and its Minister for the Environment, or by their delegates.]

3. The European Union shall be represented by one of the members of the Commission, or by another duly authorised individual.

4. The EIB shall be represented by its President or by a Vice-President, or by another duly authorised individual.

5. Each member of the EBCB shall have a number of votes equal to the number of shares subscribed by it.

6. The members may vote by written, including electronic, correspondence or be represented by another member.

7. The quorum required for the holding of General Assemblies shall be reached when then present or represented members hold not less than 50 per cent of the subscribed capital.

8. Except as otherwise provided in these Statutes, decisions of the General Assembly shall be adopted by the majority of the votes cast.

Article 19

Powers of the General Assembly

1. The members of the EBCB shall exercise their rights through the General Assembly.

2. The General Assembly shall:

i) Take any decision authorising the EBCB to conduct the operations provided for in the Article 3 of these Statutes;

ii) Approve the Rules of Procedure of the EBCB;

iii) Decide on the admission of new members;

iv) Approve the annual report submitted by the Board of Directors;

- v) Approve the annual financial report and profit and loss account;
- vi) Determine the appropriation and distribution of the net income of the EBCB;
- vii) Appoint the members of the Audit Board of the EBCB;
- viii) Exercise the powers laid down in Article 32 of these Statutes for adopting any amendments of these Statutes;
- ix) Decide on the increase of the authorised capital of the EBCB, and any calls for non-paid-in subscribed capital;
- x) Subject to the conditions laid down in Article 26 of these Statutes, decide on the increase of the ceiling on the commitments of the EBCB;
- xi) Take decisions to suspend or expel members;
- xii) Take decisions concerning the permanent termination of the operations of the EBCB and distribution of its assets;
- xiii) Appoint the members of the Board of Directors and any deputy member among the individuals designated pursuant to Article 21;
- xiv) Decide on the suspension of a member of the Board of Directors if that member is no longer able to fulfil his duties or is guilty of serious misconduct;
- xv) Exercise all powers conferred upon it by any other provision of these Statutes;
- xvi) Decide on the operating procedures.

Article 20
Chairmanship of the General Assembly

General Assemblies shall be chaired by the representative of the member with the highest number of shares in the EBCB.

Article 21
Board of Directors

1. The Board of Directors shall consist of [seven] members appointed by the General Assembly and designated by the EBCB members in accordance with the procedure laid down in the Rules of Procedure. The General Assembly may vary the number of members in the Board of Directors.

2. In carrying out their duties the members of the Board of Directors shall act independently and serve the best interests of the EBCB. They shall be accountable to the General Assembly only. Each member of the Board of Directors may be assisted by a deputy member who, in his/her absence, shall act on behalf of him/her, attend the meetings of the Board of Directors, and be vested with the same powers as those of the member he/she is replacing.

3. The members of the Board of Directors and any deputy member shall be designated in accordance with arrangements laid down in the Rules of Procedure. The Rules of Procedure may provide that a designated member shall be empowered to act as a Board member before the decision on appointment by the Annual General Assembly. The rules applicable to Board members shall also apply to any such designated member.

4. Members of the Board of Directors shall be appointed for a term of two years, which shall be renewable.

5. If the annual report submitted to the General Assembly by the Board of Directors is not approved, the Board of Directors shall resign.

6. The operating procedures of the Board of Directors shall be laid down in the Rules of Procedure.

Article 22 **Powers of the Board of Directors**

1. In addition to the powers conferred upon it by the other provisions of these Statutes, the Board of Directors shall:

i) Decide on all operations of the EBCB. It may delegate the power to decide in whole or in part, as it deems appropriate.

ii) Adopt guidelines and directives for the operations and the management of the EBCB [, taking into account the views expressed by the Strategic committee].

iii) Draw up proposals for submission to the General Assembly.

iv) Fix the general conditions for participations in equity funds or directly in the equity of special purpose entities.

v) Set the return criteria for the EBCB's operations.

vi) Determine the objectives and the limits of the borrowing operations referred to in Article 2, of these Statutes [, in accordance with the priorities set out by the Strategic committee].

vii) On the basis of proposals made by the members of the EBCB in accordance with the procedure laid down in the Rules of Procedure, appoint the Chief Executive and his/her deputy, if any. It shall also have the power to dismiss the Chief Executive and his/her deputy, if any.

viii) Supervise the Chief Executive and his/her deputy and ensure that the EBCB is managed in accordance with the provisions of these Statutes and with the guidelines and directives laid down by the Board of Directors.

ix) Submit the annual accounts and the annual report on the activities of the EBCB to the General Assembly [, pursuant to specific requirements set out by the Strategic committee].

x) Convene General Assemblies of the EBCB.

xi) Without prejudice to the powers of the General Assembly, take decisions on any other matters falling outside the competence of the Chief Executive.

Article 23 **Chairmanship of the Board of Directors**

1. The Board of Directors shall be chaired by one of its members designated in accordance with the provisions laid down in the Rules of Procedure.

2. If the Chairman is unable to attend, the Board of Directors shall be chaired by another member of the Board of Directors designated in accordance with the provisions in the Rules of Procedure.

Article 24 **Board of Directors - Meetings - Quorum**

1. The Board of Directors shall meet as often as required by the interests of the EBCB and at least once a calendar quarter. Meetings shall be convened by the Chairman and agendas shall be drawn up in accordance with the Rules of Procedure [, in accordance with priorities set out by the Strategic Committee]. The Chairman shall convene a meeting of the Board of Directors if a Board member submits a reasoned request to this effect. Board meetings shall be held either at the headquarters of the EBCB or at any other location selected by the Chairman.

2. Decisions of the Board of Directors may be taken by written procedure subject to the conditions and in accordance with the rules laid down in the Rules of Procedure.

3. The proceedings of the Board of Directors shall be valid only if not less than half of the Board members are present.

4. Decisions of the Board of Directors shall be adopted by majority vote, save except for any proposal referred to in paragraph 2 of Article 13, which shall be adopted by unanimous vote.

Article 25 Chief Executive

1. The EBCB shall be managed by a Chief Executive. He/She shall act independently and serve the best interests of the EBCB and shall be accountable only to the Board of Directors in carrying out his/her duties.

2. The Chief Executive shall be appointed for a term of up to 5 years and shall be eligible for reappointment.

3. The Chief Executive may be assisted by a deputy who, in his/her absence, shall replace the Chief Executive and be vested with the same powers.

4. The procedures for making proposals for the appointment of the Chief Executive and any deputy shall be laid down in the Rules of Procedure.

[5. The Chief Executive shall chair the Executive Committee.]

Article 26 Powers of the Chief Executive

1. The Chief Executive shall be responsible for the day-to-day management of the EBCB in accordance with the provisions of these Statutes and the guidelines and directives adopted by the Board of Directors.

2. The Chief Executive shall in particular:

i. Act in line with the guidelines and directives adopted by the Board of Directors in accordance with Article 22 of these Statutes.

ii. Submit the annual report of the EBCB to the Board of Directors.

iii. Establish under his/her responsibility the annual accounts of the EBCB within three months following the end of each financial year and submit them to the Board of Directors.

iv. Provide the Board of Directors with such additional reports and documents as laid down in the Rules of Procedure or upon request of the Board of Directors.

3. The Chief Executive shall represent the EBCB in its relations with third parties and in judicial proceedings.

4. Documents concerning the EBCB and all commitments entered into on its behalf shall be signed by the Chief Executive or by a representative, duly authorised by the Chief Executive.

5. The employees of the EBCB shall be under the authority of the Chief Executive and shall be engaged and discharged by him/her.

Article 27 Strategic committee

1. In order to support the ability of the EBCB to fulfil its objective to foster the transition towards a highly energy efficient and low-carbon economy while protecting biodiversity, a Strategic Committee is established to allow representation of civil society.

2. The Strategic Committee shall consist of the following members:

- [four] representatives of environmental Non-Governmental Organizations appointed by the European Environmental Bureau for two years and taking into account the need for gender balance.
- [two] representatives elected by the Committee of the Regions of the European Union for two years.
- [three] representatives elected by the Economic and Social Committee of the European Union for two years.
- [two] representatives appointed by [the Intergovernmental panel on climate change]
- [two] representatives appointed by [an European biodiversity experts organisation]

3. The proceedings of the Strategic Committee are defined in the Rules of Procedure.

Article 28 Functions of the Strategic Committee

1. The Strategic Committee is an advisory authority.

2. Without prejudice to Articles 21, 22 and 23 of these Statutes, the Strategic Committee delivers views and recommendations concerning the conduct of the EBCB's operations, pursuant to Article 2 of these Statutes.

3. Its views and recommendations shall be made available to the public.

4. Prior to the elaboration of guidelines and directives for the operations and the management of the EBCB by the Board of Directors, the Strategic Committee is authorised to formulate orientations aimed at improving the implementation of the EBCB's operations.

5. Prior to the drafting of the annual report on the activities of the EBCB by the Board of Directors, the Strategic Committee sets out specific requirements intended for this report. These requirements shall be tackled by this report.

6. Prior to each Board of Directors' meeting, the Strategic Committee is authorised to set out proposed priorities that ought to be submitted to the Board of Director's members.

Article 29 Executive Committee

1. An Executive Committee is charged with risk management, compliance monitoring and the settling of potential internal disputes prior to the submission of projects to the Board of Directors.
2. The Executive Committee shall be chaired by a Secretary appointed by the Chief Executive.
3. The Executive Committee shall be composed of all EBCB's Directors-General, including the one in charge of the EBCB's operations.
4. The Executive Committee shall be convened on a weekly basis.
5. The proceedings of the Executive Committee are defined in the Rules of Procedure.

Article 30 Audit

1. The accounts of the EBCB shall be audited annually by an Audit Board consisting of [five] auditors appointed by the General Assembly. [The General Assembly may decide to increase the number of auditors up to five.] Nominations shall be made in accordance with the terms laid down in the Rules of Procedure. [Two auditors shall be appointed from a list of at least four auditors proposed by the Strategic Committee.]
2. The members of the Audit Board shall act in accordance with the highest professional standards. The Audit Board shall confirm that the financial report and profit and loss account of the EBCB give a true and fair view of the financial position of the EBCB with respect to its assets and liabilities, and to the results of its operations for the financial year under review. [A specific attention shall be drawn on the implementation of provisions of the Article 2 of these Statutes.]

Article 31 Amendments

1. These Statutes can be amended by decision of the General Assembly on proposal by the Board of Directors. Any changes to Articles 2 and 3 of these Statutes shall require a majority of 85% of the votes cast.
2. Unless the General Assembly decides otherwise, approved amendments shall take effect three months after the date on which these amendments have been notified to the members of the EBCB.

Article 32 Minutes

1. The proceedings of the General Assembly shall be minuted. The minutes shall be drawn up by the secretariat of the EBCB and copies or extracts thereof shall be certified and issued to the members.
2. The proceedings of the Board of Directors shall be minuted. The minutes shall be drawn up by the secretariat of the EBCB and copies or extracts thereof shall be certified and issued to the members.

Article 33 Law and Jurisdiction

1. Disputes between the EBCB on the one hand, and the beneficiaries of its operations on the other, shall be decided by the competent national courts.

2. To this end, the EBCB shall elect a domicile in each Member State of the European Union. It may, however, in any contract, elect a specific domicile or provide for arbitration.

3. As provided for and within the limits laid down in the Treaty on the functioning of the European Union (Article 28 (5) of the Statute of the EIB), disputes concerning measures adopted by the organs of the EBCB shall be subject to the jurisdiction of the Court of Justice of the European Union.

PART II: EUROPEAN FUND for CLIMATE AND BIODIVERSITY

THE CONTRACTING PARTIES

Determined to equip themselves with the tools to finance decisive action for the mitigation of climate change and the protection of biodiversity, through a Union for Climate and Biodiversity,

WHEREAS:

- (1) The establishment of an ambitious European budget for climate and biodiversity would strengthen the capacity of States Parties to invest in the ecological transition at the required level, while creating jobs, particularly in building and renovation, renewable energies, repair of household goods and recycling, agriculture based on the principles of agroecology, and public transport.
- (2) The introduction of a climate-contribution indexed to the evolution of the carbon footprint of companies would make it possible both to increase the resources available for investments related to the ecological transition and to address the activities of companies towards modes of production less polluting and more efficient in the use of resources. The introduction of such a contribution is in line with the objective of Article 191 (2) of the Treaty on the Functioning of the European Union, which states that the Union's policy is based on the 'polluter pays principle'.
- (3) In accordance with Article 273 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has jurisdiction to be acquainted of any dispute between the Contracting Parties or between the Contracting Parties and the European Climate and Biodiversity Fund about the interpretation and application of this Treaty.

HAVE AGREED AS FOLLOWS:

TITLE I: CREATION OF THE EUROPEAN FUND for CLIMATE AND BIODIVERSITY

Article 1

Institution of the European Fund for Climate and Biodiversity

Through this Treaty, the members of the Union for Climate and Biodiversity manage to adopt a budget known as the European Fund for Climate and Biodiversity, hereinafter referred to as "the Fund".

Article 2

Object

1. The purpose of the Fund is to finance investments in a high-energy, low-carbon economy while protecting biodiversity in the Member States of the European Union and in the partner countries of Africa and the Union for the Mediterranean sea.
2. These investments may concern projects:
 - i) To support the insulation of buildings, including private homes;
 - ii) To foster productive investment in transport and energy infrastructures, including electromobility and a more integrated urban transport system, in order to support a transition to an energy efficient and low-carbon economy in a competitive environment and improving standard of living and working conditions;
 - iii) To support training and knowledge dissemination for the sustainable management of land, in particular through agro-ecological and diversified forms of farming, and to support farmers operating a shift from conventional to agro-ecological farming;

- iv) To promote research in new technologies in the relevant sectors such as, in particular, energy supply based on renewable energies and the development of affordable and integrated energy storage solutions, and transport, for the development of low-carbon alternatives at competitive cost levels;
- v) To support bringing the most promising innovations to market, thus overcoming the 'deployment deficit', for both technological and social innovations that contribute to the transition towards a highly energy efficient and low-carbon economy while protecting biodiversity;
- vi) To provide technical assistance for the preparation, financing and implementation of relevant projects, initiated at national, regional or municipal levels, or by private actors, including citizens-led transition initiatives and projects based on social innovations, in particular in the sectors of transport, energy, food;
- vii) To support the establishment and growth of networks of actors designing innovations for a transition to an energy efficient and low-carbon economy while protecting biodiversity, in order to accelerate collective learning and the dissemination of best practices;
- viii) To give support to economically viable projects involving more than one recipient member country and contributing to the transition towards a highly energy efficient and low-carbon economy;
- ix) To support the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources;
- x) Considered relevant by the Climate Parliament, beyond provisions listed above.

TITLE II: DEMOCRATIC CONTROL

Article 3 Institution of a Parliament of the Union for Climate and Biodiversity

The Parliament of the Union for Climate and Biodiversity, hereinafter referred to "the Climate Parliament", is composed of the members of the European Parliament elected in the Member States of the European Union who are members of the Union for climate and biodiversity. He is housed in the European Parliament.

Article 4 Sessions

Climate Parliament holds [two] [four] annual sessions of one week each.

Article 5 Decisions

1. Climate Parliament shall take its decisions by a simple majority of the members present. For the calculation of the majority, abstentions are not taken into account.
2. For any decision, a quorum of two-thirds of the Members of Climate Parliament physically present in session shall be attained.
3. If, during a session, the attendance quorum set in the preceding paragraph is not reached, a decision on the proposals put to the vote at that session may be validly taken during the following session, without condition quorum.

Article 6 Functions

1. In connection with relevant civil society organizations and relevant banks and cooperation organizations, the Climate Parliament has to stimulate a new dynamic and operate new forms of cooperation with the governments and civil societies of the partner countries in Africa and the Union for the Mediterranean seain the fight against climate change and the protection of biodiversity.
2. Each year, Climate Parliament adopts decisions on the following issues:
 - (i) It approves the Fund's budget by a [simple] [two-thirds] [absolute] majority of its members.
 - (ii) It defines all the expenditures to be financed in the fight against climate change (mitigation and adaptation policies) and the protection of biodiversity;
 - (iii) It defines the bases, the rates and the methods of recovery of the levies necessary to finance its expenses;
 - (iv) It evaluates the Fund's budget, in particular on the basis of indicators that it determines and evolves freely.

Article 7 Plafond

The budget of the Fund is set each year by Climate Parliament. It may not exceed the plafond of 1% of the combined gross national income of the Member States of the Union for Climate and Biodiversity signatories to this Treaty.

TITLE III: FUNDING

Article 8 Contribution for Climate

1. The main tool for financing the Fund is a climate contribution by companies, ranging from [1% to 5%] of the amount of profits before taxes. The little [and medium] enterprises, employing less than [250] employees and having an annual turnover below [EUR 50 million or an annual balance sheet below EUR 43 million], are exempt from payment of this climate contribution.
2. The rate applied to each company is defined by the Climate Parliament. It varies according to the efforts made by the company in order to reduce its greenhouse gas emissions, according to criteria defined by the Climate Parliament.
3. [To this end, companies are classified in four categories:
 - Category A enterprises are businesses that develop new technologies about renewable energies, or decisive innovations in the field of technologies and low carbon processes, in particular carbon capture and utilization (CCU) safe for the environment;
 - Category B enterprises are companies that use production methods having a high efficiency, calculated as 50% higher (in terms of CO₂ removal) than the industrial sector average;
 - Category C firms are companies using production methods whose efficiency is close to the industry average, i.e. whose efficiency of production is not higher than 50% nor less than minus 50% above average;
 - Category D enterprises are enterprises that use production methods having a lower efficiency of at least 50% above industry average.]
4. [Category A and B companies are subject to tax at the lowest rate. Category C companies are subject to the average rate. Category D companies are subject to the highest rate.]
5. [The Climate Parliament defines, each year, the rates applied to Category A, B, C and D companies.]

6. [Each member of the Fund shall keep a register of large companies that rank them according to the four categories defined in paragraph 3. This classification is based on the information that each company provides, on an annual basis, about its performances.]
7. For implementing this section, the greenhouse gases are the gases as defined in the Annex II of Directive 2003/87 / EC of the European Parliament and of the Council of 13 October 2003 establishing a system for trading in emission quotas for greenhouse gas emissions in the Community and amending the Council Directive 96/61 / EC.
8. Member States of the Union for Climate and Biodiversity check the information they receive from companies subject to the contribution climate. They put in place effective sanctions, proportionate and dissuasive in case of false information or in case of refusal to respond to requests for additional information sent to the companies.

TITLE IV: EXECUTIVE

Article 9 Council of the Union for Climate and Biodiversity

To implement the decisions of the Climate Parliament, it is created a Council of the Union for Climate and Biodiversity, hereinafter referred to as "Climate Council".

Article 10 Composition and voting rules of the Climate Council

9. The Climate Council shall consist of the Ministers responsible for the environment of the Member States of the Union for climate and biodiversity. In case of absence, the ministers can be supplemented by personalities having full competence to act on their behalf.
10. The Council elects a President and a Vice-President, for a term of two years, among its members. This election is ruled at qualified majority. The president and the vice-president may be re-elected at the end of their mandate. A new election is organized without delay if the minister no longer exercises his national mandate.
11. The Member of the European Commission responsible for the environment and the President of the European Investment Bank or, once it has been established, the European Climate and Biodiversity Bank, may participate in Climate Council meetings as observers.
12. The Climate Council takes its decisions by a qualified majority, which is considered to be infringed when [4/5 of the Member States], representing [at least 50% of the population] of all these States, do agree with the proposed decision. For any decision, a quorum of [two-thirds] of the members must be reached. Abstentions do not preclude the adoption of a Climate Council decision.
13. The services of the European Commission are responsible for the effective implementation of Climate Council decisions.

TITLE V: FINANCIAL MANAGEMENT

Article 11 Internal audit

An internal audit function is established in accordance with international standards, under the conditions laid down in a Climate Parliament decision.

Article 12 External audit

1. The European Court of Auditors is responsible for the external audit of the Fund's accounts. It is responsible for certifying the annual financial statements.
2. Every year, the European Court of Auditors prepares a report for the Parliament. This report is made public and communicated to the national parliaments of the Member States of the Union for Climate and Biodiversity and to the national parliaments of the partner countries of Africa and the Union for the Mediterranean sea.
3. Every year, a public debate on this report is held in Climate Parliament. The civil society organizations represented in the European Economic and Social Committee fully participate in this debate.

TITLE VI: LINKS WITH THE EUROPEAN UNION

Article 13 Consistency with the European Union

1. This Treaty shall be applied and interpreted by the Contracting Parties in accordance with the Treaties on which the European Union is founded, and in particular Article 4 (3) of the Treaty on European Union and the right of the European Union, including procedural law when it is necessary to adopt secondary legislation.
2. This Treaty applies only to the extent that it is compatible with the Treaties on which the European Union is founded and with the law of the European Union. It does not affect the powers conferred on the Union to act in the field of the environment and the fight against global warming.

Article 14 Integration into the European Union

Within a maximum of [five] years from the date of entry into force of this Treaty, on the basis of an assessment of the experience gained in its implementation, the necessary measures shall be taken in accordance with the Treaty on the European Union and the Treaty on the Functioning of the European Union, in order to integrate the content of this Treaty into the legal framework of the European Union.