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A European Bank for Cooperation and Development: The Issue of Representation

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Abstract

The Wieser Report has emphasized how the European Financial Architecture for Development is characterized by a high level of overlap and fragmentation that produces inefficiencies in delivering aid. Fragmentation and overlap reduce the ability of the EU, the EU Member States, and the European financial institutions to compete as a single player with other stakeholders in the field of financing for development cooperation. To overcome this flaw, the Wieser Report has suggested changing the governance framework, proposing three options. One of these options would be to establish a European Bank for Cooperation and Development. The membership would include several stakeholders: the EU, the EU Member States, other European States, the European development banks, and the recipient countries. Including the recipient countries as full members would allow them to participate in defining and implementing the policy of the institution.

Keywords: European Financial Architecture for Development; Wieser Report; European Bank for Cooperation and Development; legal framework; governance

A. Introduction

In terms of cooperation for development, the European Union (EU) and its Member States are the biggest aid donors in the world, accounting for nearly half the total official development assistance (ODA)¹ provided to developing countries. This primacy is collectively held by a multiplicity of actors: the EU, the EU Member States, and the European Investment Bank (EIB). However, this collective primacy is built on fragmentation and overlap. Fragmentation and overlap are consistent with the picture of the European Treaties according to which the EU policy in the field of development cooperation is called to complement and reinforce the policies pursued by Member States and vice versa.² As this policy does not fall within the exclusive competences of the

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¹Official Development Assistance – Definition and Coverage, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, <https://www.oecd.org/en/topics/sub-issues/oda-eligibility-and-conditions/official-development-assistance-definition-and-coverage.html> (last visited March 23, 2026) (describing how the ODA consists of financial flows provided by national development agencies or similar bodies, mainly aimed at the economic development of the beneficiary country and presenting a “grant element” of at least 25 per cent, provided that the recipient countries fall under the classification of “Developing Countries and Territories” formalized by the OECD).

²Consolidated Version of the Treaty on the Functioning of the European Union art. 208–13, Oct. 26, 2012, 2012 O.J. (C 326) 47 [hereinafter TFEU] (stipulating that the EU cooperation with third countries falls into the purview of the EU external action and includes development cooperation, economic, financial, and technical cooperation, and humanitarian aid).

EU, Member States are not precluded from exercising, individually or collectively, their competences in this field.³ Nevertheless, EU development cooperation policy cannot be qualified as a mere concurrent competence, but rather as a concurrent and parallel competence. The principle of complementary does not exclude the possibility of incoherent or contradictory measures between the EU and its Member States. Nevertheless, the effectiveness of EU action, the obligation to engage in sincere cooperation,⁴ and the principle of the unity of external representation would require that priority be given to EU measures.⁵ Consequently, Member States should not adopt national measures that would impair EU policies.⁶

In April 2019, the Council of the European Union decided to establish a High-level Group of Wise Persons (the Group), tasked with drafting an independent report on the European Financial Architecture for Development (EFAD).⁷ In this context, the EFAD includes the EIB, the European Bank for Reconstruction and Development (EBRD), and the financial instruments managed by the European Commission. In October 2019, the Group submitted a report (the Wieser Report)⁸ in which it outlined the main EU development policy goals and the functioning of the system; highlighted the main actors in the EFAD, with their respective strengths and weaknesses; and recommended the immediate steps to improve the system, the scenarios for such improvement, and the preferred way forward. In view of the Wieser Report, the solution to avoid fragmentation and overlap was to establish a single institution mandated to operate as a single European actor outside of the EU for climate and development financing.⁹ Finally, the proposal to establish such an institution was not acknowledged and the Council of the European Union decided to improve the existing machinery for development. Nevertheless, only an institutionalized framework in the form of a European Bank for Cooperation and Development (EBCD) can include a stable representation for recipient countries. Such an institution would not replace the EFAD machinery but would operate as an hub inside.

Against this background, this work intends to highlight that the idea of an EBCD was one of the options unsuccessfully envisaged in the Wieser Report. It emphasizes how the present loose-knit governance framework based on coordination and cooperation is unable to overcome fragmentation and overlap between the European stakeholders. Moreover, the present status does not ensure an effective representation for recipient countries. This is in contrast with the Sustainable Development Goals¹⁰ under which the position of developing countries in international institutions should be strengthened. To better address these flaws, this work suggests establishing a single institution in the form of an EBCD, with its own mandate, resources,

See Pieter J. Kuijper, Jan Wouters, Frank Hoffmeister, Geert de Baere, & Thomas Ramopoulos, *Cooperation Policies and Humanitarian Aid*, in *THE LAW OF THE EU EXTERNAL RELATIONS: CASES, MATERIALS, AND COMMENTARY ON THE EU AS AN INTERNATIONAL LEGAL ACTOR* 461–526 (2015).

³TFEU, *supra* note 2, at art. 4(4). See CJEU, Case 316/91, *Parliament v. Council*, ECLI:EU:C:1994:76 (Mar. 2, 1994), para. 26, <https://curia.europa.eu/juris/liste.jsf?num=C-316/91>; CJEU, Case C-91/05, *Comm'n of the European Communities v. Council of the European Union*, ECLI:EU:C:2008:288 (May 20, 2008), para. 61, <https://curia.europa.eu/juris/liste.jsf?num=C-91/05>.

⁴TFEU, *supra* note 2, at art. 4(3).

⁵MARCUS KLAMERT, *THE PRINCIPLE OF LOYALTY IN EU LAW* 165–67 (Paul Craig & Gráinne de Búrca eds., 1st ed. 2014).

⁶TFEU, *supra* note 2, at art. 210. See PHILIPP DANN, *THE LAW OF DEVELOPMENT COOPERATION* 291–94 (2013) (explaining how to promote the complementary and efficiency of their action, the EU and its Member States are called to coordinate their policies on development cooperation and to consult each other on their aid programs, including in international organizations and during international conferences. They may undertake joint action. Further, Member States can contribute to the implementation of EU aid programs).

⁷Council Decision 2019/597 of Apr. 9, 2019, On the Establishment of a High-level Group of Wise Persons on the European Financial Architecture for Development, 2019 O.J. (L 103) 26 (EU).

⁸COUNCIL OF THE EUROPEAN UNION GENERAL SECRETARIAT, *EUROPE IN THE WORLD: THE FUTURE OF THE EUROPEAN FINANCIAL ARCHITECTURE FOR DEVELOPMENT* (2019), https://www.consilium.europa.eu/media/40967/efad-report_final.pdf [hereinafter Wieser Report].

⁹*Id.* at 29.

¹⁰See *infra* Section D.

governance, and membership. In terms of membership, the distinguishing feature of this institution would consist of extending full membership to recipient countries and endowing them with sufficient voting power to concur in defining the policy of the institution and taking part in its decision-making process.

B. The Camdessus Report

The idea of establishing a European Bank for Cooperation and Development goes back to the Camdessus Report.¹¹ In July 2009, the European Parliament and the Council adopted a decision granting a global guarantee (Community guarantee) in respect of payments not received by the EIB, but due to it, in connection with loans and loan guarantees for EIB-eligible investment projects not carried out in the EU Member States (External Lending Mandate 2007–2013).¹² The decision also provided for a substantive mid-term review of EIB external financing.¹³ It was required that this review be based on an independent external evaluation. This evaluation was conducted by a steering committee of wise persons chaired by Michael Camdessus.

In February 2010, the steering committee delivered the Camdessus Report that, *inter alia*, highlighted the need to improve the efficiency and effectiveness of EU financial support to partner countries to rationalize the parallel financing efforts made by the EU, the EIB, other European development banks, European bilateral financial institutions, and Member States.¹⁴ To achieve these objectives, the Camdessus Report proposed a short-term option and two medium-term options. The short-term option was to establish an EIB subsidiary along the same lines as the European Investment Fund (EIF).¹⁵ This EIB subsidiary would not have required an intergovernmental intervention: it would be based on a decision of the EIB Board of Governors (Art. 28, the EIB Statute). It would be composed of a representative for each Member State and a representative of the Commission, along the same lines as the African Caribbean and Pacific (ACP) Investment Facility.¹⁶ However, in the view of the Camdessus Report, these improvements would not be sufficient to meet the challenges of the EU development goals.¹⁷ To solve this problem, two mid-term options were suggested. The first option would consist of creating a European agency for external financing composed of the representatives of the Commission and the EIB. However, this option appeared to be more of an enhancement of the short-term option than a real step and movement toward the creation of an EBCD. The main flaw was that it would not include Member States and the other European development banks. With respect to this, the second option appeared more inclusive. It would be based on creating a proper EBCD, with the EIB, the European Commission, the EBRD, the Council of Europe Development Bank (CEB), and the European Development Finance Institutions (EDFI) as shareholders.¹⁸ This option also contained some flaws: not all the Member States had a national development

¹¹EUROPEAN INVESTMENT BANK, REPORT AND RECOMMENDATIONS OF THE STEERING COMMITTEE OF “WISE PERSONS,” 43–45 (2010), www.eib.org/attachments/documents/eib_external_mandate_2007-2013_mid-term_review.pdf [hereinafter Camdessus Report].

¹²Decision 633/2009/EC of the European Parliament and of the Council of July 13, 2009, Granting a Community Guarantee to the European Investment Bank Against Losses Under Loans and Loan Guarantees for Projects Outside the Community, 2009 O.J. (L 190) 1 (EU).

¹³Consolidated Version of the Treaty on the Functioning of the European Union, Protocol (No. 5), On the Statute of the European Investment Bank art. 16, 2016 O.J. (C 202) 251 (discussing the EIB is enabled to grant financing outside the territories of the Member States) [hereinafter Statute of the European Investment Bank].

¹⁴Camdessus Report, *supra* note 11, at 41.

¹⁵See *infra* Section C (discussing the EIF).

¹⁶Council Decision 2015/354 of Mar. 2, 2015, Adopting the Rules of Procedure of the Investment Facility Committee Set Up Under the Auspices of the European Investment Bank, 2015 O.J. (L 61) 10 (EU).

¹⁷Camdessus Report, *supra* note 11, at 37–38.

¹⁸See *infra* note 34 (discussing the EDFI).

bank or a national development finance institution, and recipient countries would not be full members.¹⁹ However, times were not ripe for such a step that would have affected the room for maneuver for national development agencies in their capacity as instrument of national foreign policy.

C. The Wieser Report

The Camdessus Report did not produce any significant effect on the EU development cooperation machinery. Nevertheless, the need for a reform of this machinery remained unchanged. In April 2019, to meet this need the Council of the European Union established a High-level Group of Wise Persons chaired by Thomas Wieser tasked with producing an independent report on the challenges of and opportunities for improving and rationalizing the European Financial Architecture for Development and possible scenarios for its evolution.²⁰ In October 2019, the Group of Wise Persons submitted a report highlighting how the plurality of European stakeholders—including the Commission, EIB, EBRD, CEB, and Member States—was characterized by overlap and fragmentation, which could lead to inefficiencies.²¹ Even though the EU and its Member States are present in Africa and in other developing regions, and taken together constitute the largest contributors to ODA in the world, EU development financing is often channeled through a multitude of stakeholders, including European development and investment institutions, national and multilateral development agencies, and other financial institutions. This lack of coordination can be traced back to the absence of a strong policy center in the European system which can define and improve development policies and strategies.²²

To overcome these problems, the Wieser Report suggested that a single institution should become the natural development finance center, with the European Commission as a policy center. It was recommended that the shareholding of this institution be inclusive, but that a controlling European majority would be essential to ensure that EU funds are provided consistently with EU policies. In this vein, the report put forward three options: 1) creating a European Climate and Sustainable Development Bank (ECSDB) based on the EBRD and the EIB external financing; 2) creating a totally new ECSDB; or 3) creating an ECSDB as an EIB subsidiary.

In terms of the first option, the report emphasized how the EBRD could become the European Climate and Sustainable Development Bank without the need to amend the establishing Agreement. In this context, the EIB would restrict its external mandate and confine its financing to pre-accession countries. Unfortunately, this scenario has three main flaws. First, financing decisions taken by the EBRD Board of Directors need a meeting quorum of the majority of the directors, provided such a majority represents not less than two-thirds of the total voting power of the members²³ combining a voting quorum of the majority of the voting power of the members voting.²⁴ The key point is that following Brexit, the EU shareholding as a whole—the Member States plus the Commission and the EIB—has been weakened and accounts for 54 per cent of the

¹⁹Wieser Report, *supra* note 8, at 50 (providing a list of National Development Banks and National Development Finance Institutions).

²⁰Council Decision 2019/597 of Apr. 9, 2019, On the Establishment of a High-Level Group of Wise Persons on the European Financial Architecture for Development, 2019 O.J. (L 103) 26 (EU). This decision had been already envisaged in the Franco-German Meseberg Declaration (June 2018): “To set up swiftly a high-level group of “wise persons” on the European Financial architecture for development (especially regarding the respective roles of EIB and EBRD), in order to make proposals for the December European Council.” Meseberg Declaration: Renewing Europe’s Promises of Security and Prosperity 3, https://www.diplomatie.gouv.fr/IMG/pdf/declarationconjointe_cle0c657a.pdf.

²¹Wieser Report, *supra* note 8, at 13.

²²*Id.* at 23.

²³EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, BASIC DOCUMENTS OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT art. 28(2) (2025), <https://www.ebrd.com/home/news-and-events/publications/institutional-documents/basic-documents.html#> [hereinafter EBRD].

²⁴*Id.* at art 29(3).

voting power,²⁵ which is an insufficient threshold to satisfy the meeting quorum and just above the voting quorum. Second, the report failed to highlight that the recipients of EBRD financing are those member states that are indicated as recipient countries in the Annex to the establishing Agreement. Originally, those countries coincided with the former Soviet Union and the other former European socialist countries.²⁶ Subsequently, the EBRD mandate was enlarged to include Mongolia and countries of the Southern and Eastern Mediterranean.²⁷ This enlargement had required amending the establishing Agreement by an affirmative vote of not less than two-thirds of the governors, representing not less than three-fourths of the total voting power of the Members.²⁸ The same voting quorum must be required in order to include in the membership all those countries potentially recipient of financing. Once again, the voting power of the EU, EIB, and EU countries combined is not sufficient to meet these thresholds. Third, the EBRD financing is earmarked for fostering the transition of Central and Eastern European countries toward open market-oriented economies and the promotion of private and entrepreneurial initiative.²⁹ In this context, financing to governments plays a residual role, as it is recalled solely in an implicit manner in Article 11(1)(v) of the EBRD establishing Agreement, where it is laid down that the EBRD makes loans for the reconstruction or development of the infrastructure necessary for private sector expansion and the passage to a market economy.³⁰ To fill this gap and provide resources to the governments of the recipient member states, a treaty amendment would be necessary but this process would imply achieving a meeting quorum of two-thirds of the governors representing not less than two-thirds of the total voting power of the member states³¹ and a voting quorum of a majority of the voting power of the voting members.³² To sum up, the option of transforming the EBRD into an ECSDB does not take into sufficient account the capacity of the EU shareholding to determine the necessary amendments to the EBRD establishing Agreement and to take relevant financing decisions.³³

In terms of the second option, an ECSDB could be established as a totally new institution with the EIB, the European Commission, the EBRD, the EU Member States, and others—for example, the European Development Finance Institutions (EDFI)³⁴—as shareholders. This option would offer the possibility to design a management board, and a supervisory structure based on the size

²⁵See EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, EUROPEAN UNION: EBRD SHAREHOLDER PROFILE, <https://www.ebrd.com/home/who-we-are/our-organisation/shareholders/european-union.html> (last visited March 23, 2026). Dermot Hodson & David Howarth, *From the Wieser Report to Team Europe: Explaining the 'Battle of Banks' in Development Finance*, 30 J. EUR. PUB. POL'Y 2611, 2623 (2023) (following Brexit, EU combined capital subscription fell from 63.1 per cent to 54.5 per cent: sufficient for financing decisions, but not for lending strategy decisions where a majority of not less than two-thirds of the total voting power of the members voting is required).

²⁶See EBRD, *supra* note 23, at art. 1 ("The purpose of the Bank shall be to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economics.").

²⁷MARC COGEN, AN INTRODUCTION TO EUROPEAN INTERGOVERNMENTAL ORGANIZATIONS 71 (2015).

²⁸EBRD, *supra* note 23, at art. 3(2).

²⁹*Id.* at art. 2(1).

³⁰IBRAHIM F.I. SHIHATA, THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT 61–62 (1990).

³¹EBRD, *supra* note 23, at art. 25(2).

³²*Id.* at art. 29(2).

³³EBRD, *supra* note 23, at art. 5(4) (providing it is certainly true that the combined EU shareholding cannot go below the majority of the capital subscribed but this is not enough to secure decision power).

³⁴THE ASSOCIATION OF EUROPEAN DEVELOPMENT FINANCE INSTITUTIONS, <https://www.edfi.eu> (last visited March 23, 2026) (describing the European Development Finance Institutions (EDFI) as specialized development organizations that are usually majority owned by national governments of the EU and EFTA Member States, plus the United Kingdom. Since EDFI association was set up in 1992, its member institutions have financed nearly 15,000 projects, and they now manage a combined investment portfolio of €46 billion across financial services, clean energy, industry and many other sectors in more than 100 countries. EDFI's member institutions include BIO (Belgium), BMI-SBI (Belgium), CDC Group (UK), COFIDES (Spain), KfW-DEG (Germany), Finnfund (Finland), FMO (Netherlands), IFU (Denmark), Norfund (Norway), OeEB (Austria), Proparco (France), SIFEM (Switzerland), Simest (Italy), SOFID (Portugal), and Swedfund (Sweden)).

of the institution and its mandate. The management board should consist of highly qualified professionals, and the supervisory structure would need to be sufficiently high-level, diverse, and balanced as regards its expertise to provide sufficient political ownership. In this context, the EBRD would not make any extension of its current geographical mandate with a mere reduction of its interventions in certain countries of operation to the advantage of the new entity.³⁵ Generally, the creation of a new development bank occurs when certain member countries of existing financial institutions are dissatisfied with the distribution and procedure of the institutional status quo.³⁶ However, the creation of an ECSDB would not be the outcome of a procedural or distributional dissatisfaction; it would rather be aimed at avoiding fragmentation and overlap and providing a common framework to donors and recipients alike in terms of development and climate financing. Nevertheless, establishing a new financial institution would require fresh resources and balanced governance. The EU Member States were not yet ready for such a radical step.

In terms of the third option, Article 28 of the EIB Statute enables the EIB Board of Governors to establish subsidiaries of other entities with legal personality. Under this norm, in 1994 the Board of Governors established the EIF.³⁷ The EIF is mandated to provide resources through private banks and funds to small and medium enterprises across Europe. Its shareholders are the EIB, the EU (represented by the European Commission), and a large range of public and private banks and financial institutions. In this context, two points are worthy of consideration. First, shareholders also include financial institutions from the United Kingdom and Turkey.³⁸ Second, the EIF may conduct its activities in the territory of the EU Member States, in EU candidate and potential candidate countries, and in the EFTA countries and in other states.³⁹ Building on the EIF experience, the EIB Board of Governors could establish such a subsidiary with the EIB, the EU (represented by the European Commission), the EBRD and the EDFI, and other similar financing institutions from other European states as shareholders. In this context, the EBRD would not extend its current geographical mandate as operations in new countries would be carried out via the new subsidiary, but the EIB would have to separate its external development activities from its current balance sheet.⁴⁰ However, such option would be unable to replace the idea of an EBCD because it excludes states from both the membership of the institution and the reciprocity of resources. With the result that no shared development policy would be either formulated or implemented between the EU countries and the recipient countries.

1. The Reception of the Wieser Report

In December 2019, the Council of the European Union welcomed the Wiser Report.⁴¹ However, it highlighted that the key institutional changes needed to improve the EFAD machinery would have required further reflection, with priority being given to the use of the existing financial resources. In this vein, the feasibility of the second and third options outlined in the report, as well as

³⁵Wieser Report, *supra* note 8, at 31–32.

³⁶See Miles Kellerman, *The Proliferation of Multilateral Development Banks*, 14 REV. INT'L ORG. 107, 112 (2019) (describing distributional dissatisfaction as referring to the dissatisfaction with the distribution of financial resources in relation to beneficiaries and/or projects and procedural dissatisfaction as referring to the dissatisfaction with the practices and procedures of the institution).

³⁷EUROPEAN INVESTMENT FUND, <https://www.eif.org> (last visited March 23, 2026).

³⁸EUROPEAN INVESTMENT FUND, REGISTER OF MEMBERS, https://www.eif.org/news_centre/publications/register_shareholders.pdf (Mar. 4, 2024).

³⁹Statute of the European Investment Bank, *supra* note 13, at art. 23.

⁴⁰Wieser Report, *supra* note 8, at 33–34.

⁴¹See generally COUNCIL OF THE EUR. UNION, COUNCIL CONCLUSIONS ON STRENGTHENING THE EUROPEAN FINANCIAL ARCHITECTURE FOR DEVELOPMENT (2019), <https://data.consilium.europa.eu/doc/document/ST-14434-2019-INIT/en/pdf>.

enhancements to the current institutional framework, became the object of further analysis, while the second option was put aside.⁴²

What emerges from these interlocutory conclusions, is that the EU Member States sitting on the Council of the European Union rejected the proposal of establishing a totally new ECSDB—the second option—as they were unwilling to provide further financial resources. By contrast, they considered the first and third options feasible, although having some flaws: the first option would not ensure the EU shareholding in the EBRD would have capacity to determine the EBRD decision-making process, while the third option would provide too much power to the EIB.⁴³ In June 2020, the General Secretariat of the Council of the European Union submitted the terms of reference for an independent study on the feasibility of these options to the Council of the European Union.⁴⁴ Further to exploring the first and third options, these terms of reference emphasized the need to address possible further enhancements of the current EFAD machinery, under which both the EIB and the EBRD as well as other actors would improve coordination and expand their activities outside the EU (Status Quo plus).⁴⁵ In June 2021, the Council of the European Union welcomed the independent study on the options for strengthening the future EFAD.⁴⁶ Notwithstanding the perplexities highlighted in the Wieser Report,⁴⁷ the Council of the European Union emphasized the strong convergence of views among Member States on enhancing and improving the current institutional framework as the preferred way forward to strengthen the EFAD Status Quo. In this context, the Council Conclusions highlighted some guiding points. First, the EFAD should be more effective, efficient, coherent, and visible, in line with the policy first principle and the EU strategic interests and values, but at the same time should be based on the needs of the partner countries.⁴⁸ Second, the political guidance of the EFAD should be vested with the Council, with the Commission mandated to coordination and policy steer in the implementing phase.⁴⁹ Third, the EFAD should be based on an open, collaborative, and inclusive architecture, working with all European development banks—EIB, EBRD, CEB—and finance institutions—EDFI, building on their respective country, sectoral and financial expertise, value-added and resources, and with a view to mobilizing private investment.⁵⁰

To enhance the Status Quo, three actions have been envisaged. First, the EIB and the EBRD are called to work together and strengthen their coordination, also with other global financial institutions.⁵¹ Second, the EIB is called to reinforce the collective capacity of the European development banks and finance institutions to provide financing under a Team Europe approach.⁵² Third, the members of the NDICI—Global Europe EFSD+ strategic board are called to enhance its role, in close cooperation with the NDICI—Global Europe committee, focusing on the policy first principle and strategic priorities as defined by the Council.⁵³

Also in this case, the EU member countries have chosen not to go further on the route of an institutionalization of the EFAD. However, in contrast with the fate reserved to the Camdessus

⁴²*Id.* at 7, para. 27.

⁴³Hodson & Howarth, *supra* note 25, at 2622.

⁴⁴See generally COUNCIL OF THE EUR. UNION, TERMS OF REFERENCE FOR A FEASIBILITY STUDY ON OPTIONS FOR STRENGTHENING THE FUTURE EUROPEAN FINANCIAL ARCHITECTURE FOR DEVELOPMENT (2020), <https://data.consilium.europa.eu/doc/document/ST-8523-2020-INIT/en/pdf>.

⁴⁵*Id.* at 17, para. 5.2.

⁴⁶See generally COUNCIL OF THE EUR. UNION, COUNCIL CONCLUSIONS ON ENHANCING THE EUROPEAN FINANCIAL ARCHITECTURE FOR DEVELOPMENT (2021), <https://data.consilium.europa.eu/doc/document/ST-9462-2021-REV-1/en/pdf> [hereinafter Council Conclusions].

⁴⁷Wieser Report, *supra* note 8, at 29 (“Maintaining the status quo is not an acceptable option for the future.”).

⁴⁸Council Conclusions, *supra* note 46, at para. 4.

⁴⁹*Id.* at para. 5.

⁵⁰*Id.* at para. 4.

⁵¹*Id.* at para. 7.

⁵²*Id.* at para. 9.

⁵³*Id.* at para. 12.

Report, some improvement has been made. This improvement reflects the awareness of the EU countries that the aid machinery must be amended; also, it can be read as a first step towards a proper institutionalization.

D. The Issue of Representation in the SDGs

The abandonment of the project of an EBCD has involved putting aside the issue of the representation of recipient countries in an established legal framework. Nevertheless, such a representation should be required under the Sustainable Development Goals (SDGs).

The 17 SDGs, also known as the Global Goals, were adopted by the General Assembly of the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity.⁵⁴ The main purpose of the 17 SDGs can be summarized as “transforming our world”⁵⁵ so that “no one will be left behind.”⁵⁶ The former quotation comes from the 2030 Agenda Resolution; the latter is the pledge that leaders of the world have made in the Preamble of the Resolution and reiterated in the Declaration that, in addition to the SDGs, is part of 2030 Agenda.⁵⁷ The Agenda is to be achieved by 2030 through the implementation of the 17 SDGs, accompanied by 169 targets with indicators measuring the work in progress.⁵⁸

SDG 10—Reduce Inequality Within and Among Countries—addresses one of the fundamental benchmarks for the realization of all SDGs. It includes both interstate and intrastate inequality and, in so doing, goes further than the Millennium Development Goals (MDGs).⁵⁹ The MDGs had remained largely silent on inequality and the SDGs were designed, *inter alia*, to fill this lacuna. In terms of inequality among states, Target 10.6 addresses economic and financial issues and focuses on the need to strengthen the position of developing countries in international institutions where the one-state one-vote rule does not apply, such as international financial institutions.⁶⁰ On the one hand, this step would provide developing countries with more power in the decision-making process. On the other hand, it would make global international economic and financial institutions more effective, credible, accountable, and legitimate.⁶¹ The two Bretton Woods

⁵⁴GA, U.N. Doc. A/RES/70/1 (Oct. 21, 2015) (formally adopting these resolutions). In July 2017, the SDGs were made more actionable by a report that identifies specific targets for each goal and provides indicators to measure progress. See UNITED NATIONS, THE SUSTAINABLE DEVELOPMENT GOALS REPORT (2017), <https://unstats.un.org/sdgs/files/report/2017/thesustainabledevelopmentgoalsreport2017.pdf>.

⁵⁵GA, 70th Sess., U.N. Doc. A/RES/70/1, at 1 (Oct. 21, 2015).

⁵⁶*Id.*

⁵⁷Jonas Ebbesson & Ellen Hey, *Introduction: The Sustainable Development Goals, Agenda 2030, and International Law*, in THE CAMBRIDGE HANDBOOK OF THE SUSTAINABLE DEVELOPMENT GOALS AND INTERNATIONAL LAW 1, 2–3 (Jonas Ebbesson & Ellen Hey eds., 2022).

⁵⁸See Pål Wrange, *SDG 16: Promote Peaceful and Inclusive Societies for Sustainable Development, Provide Access to Justice for All and Build Effective, Accountable and Inclusive Institutions at All Levels*, in THE CAMBRIDGE HANDBOOK OF THE SUSTAINABLE DEVELOPMENT GOALS AND INTERNATIONAL LAW, *supra* note 57, 399, at 405–06. (emphasizing how the 17 SDGs are strongly interconnected as action in one area will affect outcomes in others, and development must balance social, economic, and environmental sustainability. Countries have committed themselves to prioritize progress for those who are furthest behind. While the 17 SDGs as a whole set a high level of ambition to be achieved by multiple stakeholders in a spirit of global solidarity, there is a discrepancy between this ambition and the 17 SDGs’ targets and indicators. This discrepancy is well emphasized in SDG 16 (Peace, Justice, and Strong Institutions) where not only is ambition reduced from goal to target but also dropped from target to indicator).

⁵⁹The MDGs consist of eight international development goals for the year 2015, encapsulated in the UN Millennium Declaration. The Millennium Declaration was adopted by the UN General Assembly through Resolution A/RES/55/2 of 8 September 2000.

⁶⁰Human Rights Council Revised Draft Convention on the Right to Development, U.N. Doc. A/HRC/WG.2/23/2, art. 13(4)(d) (acknowledging verbatim Target 10.6).

⁶¹Philippe Cullet, *SDG-10: Reduce Inequality Within and Among Countries*, in THE CAMBRIDGE HANDBOOK OF THE SUSTAINABLE DEVELOPMENT GOALS AND INTERNATIONAL LAW, *supra* note 57, 258, at 261 (explaining how this situation has

Institutions have partially taken some steps to respond to this criticism. The International Monetary Fund (IMF) has reformed the Board of Executive Directors by putting an end to the category of appointed Executive Directors—the members with the five largest quotas were entitled to appoint an Executive Director—and making the Board an entirely elected body.⁶² Contextually, the quotas—and the voting power—of emerging market and developing countries have been increased bringing four emerging countries—Brazil, China, India, and Russia—among the holders of the 10 major quotas.⁶³ The International Bank for Reconstruction and Development (IBRD) has not modified the composition of the Board of Executive Directors with the five holders of the major quotas still appointing an Executive Director directly, but it has reformed the quotas increasing the voting power of developing and transition countries.⁶⁴ However significant, these modifications do not provide developing countries with effective decision-making power nor do they ensure their effective representation.

The sensitiveness of this issue is reflected in the wording of Target 10.6, which fails to fix a benchmark or a deadline regarding its achievement and which does not identify those called to implement it.⁶⁵ In this vein, Indicator 10.6.1 seems broader than the relevant target, as it speaks of the “Proportion of members and voting rights of developing countries in international organizations.”⁶⁶ This indicator reproduces literally Indicator 16.8.1 and, in doing so, dilutes the target to rebalance the voting power within international financial institutions by placing it within the broader target of widening and strengthening the participation of developing countries in all of the institutions of global governance.⁶⁷ The reference to institutions of global governance has two dimensions: the inclusion of developing states and their voting power. However, one does not necessarily go with the other: wider representation of developing countries in these institutions *per se* does not ensure effective and incisive voting power.⁶⁸

It is certainly true that this representation refers primarily to international financial institutions. Nevertheless, the EU is not excluded from the SDGs’ scope. As a supranational organization providing aid to development,⁶⁹ it is called to include properly recipient countries in its machinery of development cooperation.

been a contentious issue for decades, but it constitutes only one of the many inequalities that need to be addressed in the broad field of sustainable development).

⁶²Emanuel Castellarin, *La Réforme Institutionnelle du FMI: du 4 au 7 Amendement: Conséquence du Changement des Rapports de Forces dans le Monde ou de l’Enseignement des Crises?* [IMF Institutional Reform: From the 4th to the 7th Amendment—A Consequence of Shifting Global Power Dynamics or of Lessons Learned from Crises?], in *THE LEGAL IMPLICATIONS OF GLOBAL FINANCIAL CRISES* 127, 150–51 (Michael Waibel ed., 2020) (describing that all the 25 Executive Directors are elected by constituencies, but some constituencies are composed of one single state).

⁶³IMF, *Press Release: Historic Quota and Governance Reforms Become Effective* (Jan. 27, 2016).

⁶⁴See generally *World Bank Reforms Voting Power, Gets \$86 Billion Boost*, WORLD BANK GROUP (Apr. 25, 2010), <https://www.worldbank.org/en/news/press-release/2010/04/25/world-bank-reforms-voting-power-gets-86-billion-boost>.

⁶⁵See Johanna Aleria Lorenzo, *SDG 10 ‘Reduce Inequalities Within and Among Countries,’* in *THE UN SUSTAINABLE DEVELOPMENT GOALS: A COMMENTARY* 711, 714 (Ilias Bantekas & Francesco Seatzu, eds., 2023).

⁶⁶G.A. Res. 71/313, *Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development* (July 6, 2017).

⁶⁷*Id.* at para. 16.8.

⁶⁸See Tom Kabau, *SDG 16: ‘Promote Peaceful and Inclusive Societies for Sustainable Development, Provide Access to Justice for All and Build Effective, Accountable, and Inclusive Institutions at All Levels,’* in *THE UN SUSTAINABLE DEVELOPMENT GOALS: A COMMENTARY*, *supra* note 65, at 1157, 1232–33.

⁶⁹The current legal nature of the EU is highly disputed. See generally Peter L. Lindseth, *Supranational Organizations*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ORGANIZATIONS* 152 (Ian Hurd, Ian Johnstone & Jacob K. Cogan eds., 2017) (regarding the current legal nature of the EU as a supranational organization); Jan Klabbbers, *Sui Generis? The European Union as an International Organization*, in *A COMPANION TO EUROPEAN UNION LAW AND INTERNATIONAL LAW* 3 (Dennis Patterson and Anna Söderste eds., 2016) (regarding the current legal nature of the EU as *sui generis* organization).

E. The Status Quo and the Lack of Representation

The two pillars on which the Status Quo is based are Team Europe and the NDICI governance. Team Europe consists in coordination between all the European stakeholders, while the NDICI governance focuses on the machinery of the EU development cooperation policy. Neither of them ensures an adequate representation for recipient countries.

I. The Team Europe Approach

Team Europe is an approach initially developed in the context of the EU's Covid-19 response which sought to support partner countries and to address the pandemic in a coordinated manner between the EU and its Member States.⁷⁰ The purpose of the Team Europe approach has been to establish a single framework for action for all the European responses to Covid-19. It has combined resources from the EU, its Member States, their national development banks, and national development finance institutions, including the EIB and the EBRD.⁷¹ In this context, the EU response has addressed the most vulnerable countries in Africa, the EU's neighborhood, including the Western Balkans, the Eastern Partner countries, the Middle East and North Africa, as well as parts of Asia and the Pacific, Latin America, and the Caribbean.⁷²

In the view of the Council of the European Union, the EFAD should build on this loose-knit machinery made up of programs, facilities, networks, and platforms. Some steps have been taken on this process. In October 2021, the EIB and the EBRD signed a Framework Project Cooperation Agreement to facilitate joint financing of projects and platforms outside the EU.⁷³ In January 2022, the EIB established a new branch for development financing—"EIB Global"—to increase cooperation with the EU Member States, development finance institutions, civil society, and many other partners in the field of climate action, economic growth and development.⁷⁴ The creation of EIB Global must be read as an attempt to reinforce the position of the EIB and the EU in the global development finance arena. EIB Global has become not only an operational branch for EU priorities in providing aid to development abroad but also an EU response to new financial players in the "Global South."⁷⁵ The flaw in this picture is that it fails to address the participation of recipient countries in the decision-making process, because the EIB governance structure is based on shares subscribed by EU Member States.⁷⁶ With respect to this, it is worth highlighting that EIB Global cannot be equated to the third option envisaged in the Wieser Report (EIB subsidiary): it is not provided with legal personality, financial autonomy, or separate governance from the EIB.

⁷⁰EU Global Response to COVID-19, EUROPEAN COMMISSION, https://international-partnerships.ec.europa.eu/policies/human-development/eu-global-response-covid-19_en. See generally Aline Burni, Benedikt Erforth, Ina Friesen, Christine Hackenesch, Maximilian Hoegl, & Niels Keijzer, *Who Called Team Europe? The European Union's Development Policy Response During the First Wave of Covid-19*, 34 EUR. J. DEV. RSCH. 524 (2022) (describing how Team Europe was designed to pursue two main priorities: a common European approach to development cooperation and a multilateral solution to global development).

⁷¹Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on the Global EU Response to COVID-19, JOIN (2020) 11 final (2002) 1–2.

⁷²Coronavirus: European Union Launches "Team Europe" Package to Support Partner Countries with More Than €20 Billion, EUROPEAN UNION EXTERNAL ACTION SERVICE (Apr. 8, 2020), https://www.eeas.europa.eu/eeas/coronavirus-european-union-launches-%E2%80%9Cteam-europe%E2%80%9D-package-support-partner-countries-more-%E2%82%AC20-billion_en.

⁷³EIB and EBRD to Deepen Cooperation Outside EU: Presidents Hoyer and Renaud-Basso Sign Framework Agreement, EUROPEAN INVESTMENT BANK (Oct. 11, 2021), <https://www.eib.org/en/press/all/2021-335-eib-and-ebd-to-deepen-cooperation-outside-eu-presidents-hoyer-and-renaud-basso-sign-framework-agreement>.

⁷⁴EUR. INVESTMENT BANK, EIB GLOBAL: PARTNERSHIPS WORLDWIDE (2022), https://www.eib.org/files/publications/eib_global_flyer_en.pdf.

⁷⁵THOMAS MAROIS, SHAPING THE FUTURE OF EIB GLOBAL: RECLAIMING PUBLIC PURPOSE IN PUBLIC FINANCE 6 (2022), <https://assets.nationbuilder.com/eurodad/pages/2952/attachments/original/1654154131/EIB-report-FINAL-jun02.pdf?1654154131>. On the Global South, *infra* note 127.

⁷⁶*Id.* at 3.

The Team Europe approach reflects the inability of the Council of the European Union to choose between either the first option (EBRD) or the third option (EIB) of the Wieser Report. The choice of Team Europe has the great advantage to preserve the national differences in terms of development cooperation and the role of national development finance institutions.⁷⁷ Although the coordination machinery set up under Team Europe is not completely able to overcome the problem of fragmentation that still characterizes the EU's development policy,⁷⁸ it has certainly enhanced the role of the EU as a global player in the arena of international development cooperation.⁷⁹ Nevertheless, it confirms a tendency towards integration without a proper supranational decision making process.⁸⁰ This method of integration does not include the recipient countries.

II. The NDICI Governance

The NDICI Global Europe Regulation has been established for a period of seven years, with its duration aligned with that of the multiannual financial framework (MMF).⁸¹ It aims to support countries to overcome long-term developmental challenges and seeks to contribute to achieving the international commitments and objectives that the EU has agreed to, with particular reference the UN 2030 Agenda and its Sustainable Development Goals and the Paris Agreement on Climate Change.⁸² The governance is entrusted to the Commission, which is assisted by two advisory organisms: the EFSD+ strategic board and the NDICI committee of procedure.

1. The Advisory Organisms

The EFSD+ strategic board is composed of representatives of the Commission and of the High Representative for Foreign Affairs and Policy Security, of all the Member States and of the EIB, with an observer from the European Parliament.⁸³ Contributors, eligible counterparts, partner countries, relevant regional organizations, and other stakeholders may be granted observer status only where appropriate. The EFSD+ strategic board is co-chaired by the Commission and the High Representative.⁸⁴ The strategic board is mandated to advise the Commission on the strategic orientation and priorities of External Action Guarantee investments under the EFSD+ and to contribute to their alignment with the guiding principles and objectives of the EU external action, development policy, and European Neighborhood Policy.⁸⁵ The EFSD+ strategic board also supports overall coordination, complementarity, and coherence between the regional investment

⁷⁷Hodson & Howarth, *supra* note 25, at 2625.

⁷⁸*Id.* at 2626.

⁷⁹Global Gateway, EUROPEAN COMMISSION https://commission.europa.eu/topics/international-partnerships/global-gateway_en (detailing how under the Global Gateway Strategy Between 2021 and 2027, Team Europe will mobilize up to €300 billion of investments for sustainable and high-quality projects, taking into account the needs of partner countries and providing lasting benefits for local communities. The first initiative was the Africa-Europe Investment Package with approximately €150 billion of investment dedicated to enhancing cooperation with African partners).

⁸⁰Hodson & Howarth, *supra* note 25, at 2628.

⁸¹Regulation 2021/947 of the European Parliament and of the Council of June 9, 2021, Establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, Amending and Repealing Decision No. 466/2014/EU and Repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No. 480/2009, 2021 O.J. (L 209) 1 (EU) [hereinafter NDICI Regulation].

⁸²Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI – Global Europe), EUROPEAN COMMISSION, https://enlargement.ec.europa.eu/funding-technical-assistance/neighbourhood-development-and-international-cooperation-instrument-global-europe-ndici-global-europe_en.

⁸³WESTERN BALKANS INVESTMENT FRAMEWORK, <https://www.wbif.eu/> (explaining that operations in the Western Balkans are advised by a specific investment board).

⁸⁴NDICI Regulation, *supra* note 81, at art. 33(4).

⁸⁵*Id.* at art. 33(2).

platforms, between the pillars of the External Investment Plan⁸⁶ and between the External Investment Plan and the EU's other efforts on migration and on the implementation of the 2030 Agenda, including the fight against climate change.⁸⁷ The Commission is also assisted by a technical risk assessment group in its risk management functions.⁸⁸ The implementation of the EFSD+ is ensured by regional operational boards that, taking into consideration the advice of the strategic board and relevant risk assessments, support the Commission in defining regional and sectoral investment goals and regional, sectoral, and thematic investment windows, and that formulate opinions on blending operations and on the use of the External Action Guarantee covering EFSD+ proposed investment programs.⁸⁹ The Commission selects the eligible counterparts taking due account, *inter alia*, of the advice of the strategic board and regional operational boards.

The NDICI committee of procedure has been created in accordance with Regulation 182/2011,⁹⁰ with the mandate to control the Commission's exercise of implementing powers.⁹¹ The committee is composed of representatives of Member States and is chaired by a representative of the Commission. An observer from the EIB takes part in the committee's proceedings regarding questions concerning the EIB.⁹² The committee may convene in different formats to address specific areas of cooperation and intervention, such as geographic, thematic, and rapid response actions to advise the Commission.⁹³ The chair submits to the committee the draft implementing act to be adopted by the Commission.⁹⁴ The draft act is assessed under the examination procedure set out in Article 5 of Regulation 182/2011.⁹⁵

The flaw in this picture is that recipient countries are excluded from the machinery of the NDICI Regulation. They can merely seat as observers on the EFSD+ strategic board if the representatives of the Commission, the High Representative, the EIB, and the Member States deem that it is appropriate. But the decision to provide financing rests only with the Commission.⁹⁶

⁸⁶EU EXTERNAL INVESTMENT PLAN, EUROPEAN UNION, https://commission.europa.eu/system/files/2019-11/factsheet_ei_p_en.pdf (explaining how the EU External Investment Plan encourages investment in partner countries in Africa and the EU Neighbourhood region. It promotes inclusive growth, job creation and sustainable development and also addresses some of the root causes of irregular migration).

⁸⁷NDICI Regulation, *supra* note 81, at art. 33(3).

⁸⁸*Id.* at art. 33(8).

⁸⁹*Id.* at art. 34. See Anissa Bougrea, Jan Orbie & Mattias Vermeiren, *The New European Financial Architecture for Development: Change or Continuity?*, 27 EUR. FOREIGN AFF. REV. 337, 352–53 (2022) (describing how the External Action Guarantee supports the EFSD+ operations covered by budgetary guarantees. Under the External Action Guarantee the EU may guarantee operations up to €53.449.000.000, *id.* art. 31(4), based on Guarantee Agreements signed between January 1, 2021 and December 31, 2027. One half of this guarantee is reserved to the EIB under the exclusive and non-exclusive dedicated investment windows. *Id.* at art. 36(3). The other half of the guarantee is available to other financial institutions—for example, the national development finance institutions—under the open window architecture).

⁹⁰Regulation 182/2011 of the European Parliament and of the Council of Feb. 16, 2011, Laying Down the Rules and General Principles Concerning Mechanisms for Control by Member States of the Commission's Exercise of Implementing Powers, 2011 O.J. (L 55) 13 (EU) [hereinafter Regulation 182/2011].

⁹¹See generally Paul-John Loewenthal, *Article 291 TFEU*, in *THE EU TREATIES AND THE CHARTER OF FUNDAMENTAL RIGHTS: A COMMENTARY 1925* (Manuel Kellerbauer, Marcus Klamert & Jonathan Tomkin eds., 2019) (being the legal basis provided by TFEU art. 291 under which, where uniform conditions for implementing legally binding acts are needed, those acts shall confer implementing powers on the Commission. The mechanisms for control by Member States of the Commission's exercise of these implementing powers are set by regulation).

⁹²NDICI Regulation, *supra* note 81, art. 45(6).

⁹³*Id.* at art. 45(1).

⁹⁴Regulation 182/2011, *supra* note 90, at art. 3(3).

⁹⁵NDICI Regulation, *supra* note 81, at art. 45(2) (explaining how this is consistent with the fact that, under Regulation 182/2011, the examination procedure should apply where the basic act confers implementing powers on the Commission relating to programs with substantial budgetary implications or directed to third countries (Whereas No. 12, Reg. 182/2011)).

⁹⁶NDICI Regulation, *supra* note 81, at art. 25(1) (establishing this is an implementing act incorporating action plans and measures that is adopted with the assistance of the committee of procedure).

2. The Decision-Making Process

This flaw is partially mitigated by the principle of ownership under which the EU policy driven aid confronts an intense consultation with partner countries and civil society.⁹⁷ Partner countries, the EU, and its Member States agree on the common priorities in the Joint Documents, which take the form of Partnership Priorities, Association Agendas, or equivalent.⁹⁸ These strategic documents are prepared in an inclusive dialogue and consultation with partner countries, the EU Member States, civil society, women and youth organizations, local authorities, the private sector, and other donors. They contain indicative financial allocations, objectives, results, and indicators—with baselines and targets—to evaluate the effectiveness of the EU interventions.

In this context, the Commission adopts annual and multiannual measures and action plans relating to international development cooperation. Measures may take the form of individual measures, special measures, support measures, or exceptional assistance measures. Action plans are based on programming documents and are prepared in an inclusive, transparent, and timely manner.⁹⁹ Programming documents must provide a coherent framework for cooperation between the EU and partner countries or regions, consistent with the overall purpose and scope, objectives, and principles of the NDICI Regulation.¹⁰⁰

However, the picture differs for ACP countries and non-ACP countries.¹⁰¹ The ACP countries consist of a group of states in Africa, the Caribbean, and the Pacific that are members of the Organisation of African, Caribbean and Pacific States (OACPS). Formerly known as the African, Caribbean, and Pacific Group of States (ACP), the OACPS main objectives are sustainable development and poverty reduction within its member states, as well as their integration into the world's economy. In November 2023, the Cotonou Agreement as partnership agreement was succeeded by the Samoa Agreement.¹⁰² Under the new Partnership Agreement, the Parties have acknowledged that governments play a central role in defining and implementing priorities and strategies for their countries. In this context, they have recognized the crucial role of parliaments in shaping and adopting legislation, agreeing budgets, and holding governments to account. Also, they have recognized the role and contribution of local authorities in enhancing democratic accountability and complementing governmental action.¹⁰³ Moreover, the Partnership Agreement

⁹⁷See *infra* note 106 (describing country ownership).

⁹⁸See generally *European Neighbourhood Policy*, EUROPEAN UNION EXTERNAL ACTION, (July 29, 2021), https://www.eeas.europa.eu/eeas/european-neighbourhood-policy_en (detailing the EU supporting the European Neighbourhood Policy objectives through political dialogue and other tools, including financial support and technical cooperation. Association Agendas, Partnership Priorities and equivalents are the basis for designing priorities for assistance by establishing political and economic reform agendas with short- and medium-term priorities).

⁹⁹NDICI Regulation, *supra* note 81, at art. 23.

¹⁰⁰*Id.* at art. 12(2)(a). *Id.* at art. 13(1)(a) (programming of geographic programs shall be based on an early, continuous, and inclusive dialogue between the EU, Member States and the partner countries concerned, including national, regional and local authorities, involving civil society organizations, national, regional and local parliaments, and other stakeholders).

¹⁰¹See DANN, *supra* note 6, at 328 (describing how the EU development cooperation is based on a bipartite structure. On the one hand, the cooperation with ACP countries that were former colonies of some Member States. On the other hand, the EU also pursues cooperation with other countries).

¹⁰²Partnership Agreement Between European Union and its Member States, of the One Part, and the Members of the Organisation of African, Caribbean and Pacific States, of the Other Part, Nov. 20, 2023 O.J. (L 2862) (EU). The new agreement was officially signed on November 15, 2023 by the EU and its Member States and OACPS members in Samoa. See Council Decision 2023/2861, of July 20, 2023, On the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union and its Member States, of the One Part, and the Members of the Organisation of African, Caribbean and Pacific States, of the Other Part, 2023 O.J. (EU). EUROPEAN COMMISSION, POST-COTONOU NEGOTIATIONS ON NEW EU/AFRICA-CARIBBEAN-PACIFIC PARTNERSHIP AGREEMENT CONCLUDED, (Apr. 14, 2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1552.

¹⁰³Partnership Agreement Between European Union and its Member States, of the One Part, and the Members of the Organisation of African, Caribbean and Pacific States, of the Other Part, *supra* note 102, at art. 5(1).

benefits from an institutional framework composed of Joint Summit of Heads of State or Government, a joint Council of Ministers, and a Joint Parliamentary Assembly.¹⁰⁴

Non-ACP countries cannot benefit from this upstream institutional framework. They can rely only on the common NDICI rules relating to multiannual programs. These programs can consist of: a national or regional strategy, in the form of a development plan or a similar document accepted by the Commission; a framework document laying down the EU's policy towards the partner or partners concerned; and a joint document between the EU and the partner or partners concerned setting out common priorities and mutual commitments.¹⁰⁵ These documents are based on a continuous and inclusive dialogue between the EU, its Member States and the partner countries concerned, including national, regional and local authorities, involving civil society organizations, national, regional, and local parliaments and other stakeholders, in order to enhance democratic ownership of the process and to encourage support for national and regional strategies.¹⁰⁶ These procedural rules are vaguely formulated in comparison to the rules laid down for the ACP countries.¹⁰⁷

Against this background, the role of recipient countries is substantively limited and unevenly designed in the policy making process and substantively absent in the decision-making process. The annual or multiannual work programs constitute a financing decision by the Commission¹⁰⁸ with financing agreements bilaterally concluded downstream.

F. A European Bank for Cooperation and Development

The present status of the EU development cooperation machinery has not overcome the flaws highlighted in the Wieser Report. These flaws could be cured under a more structured legal architecture based on adequate governance and inclusive membership. The establishment of an EBCD as a single lender would provide a common level playing field for all the stakeholders: the EU, the EU Member States, the non-EU Member States, the European regional development banks, and the recipient countries. In terms of donors, an EBCD would constitute the keystone of the EFAD by rationalizing, prioritizing, and refocusing its methods and objectives. It would provide a coherent European policy on development cooperation and enable all the European stakeholders to act as a single player in the arena of international development cooperation. In terms of recipient countries, it would overcome the asymmetry between ACP and non-ACP countries and include them in the institution on equal footing with donor countries. This inclusion would allow recipient countries to concur in defining the policy of the EBCD and to take part in its decision-making process. This approach would be consistent with the SDGs.

I. The EBCD Legal Framework

Establishing an EBCD, as already envisaged in Option 2 of the Wieser Report, would be justified by the growing scale of global challenges relating to sustainable development¹⁰⁹ and the need for a

¹⁰⁴*Id.* at art. 87.

¹⁰⁵NDICI Regulation, *supra* note 81, at art. 14.

¹⁰⁶NDICI Regulation, *supra* note 81, at art. 13 (describing that, under the Accra Agenda, “country ownership” implies that a developing country's government should take stronger leadership of its own development policies with the involvement of parliaments and citizens in the process and a donor country should give support to these policies and respect developing countries' priorities). See generally ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, THE PARIS DECLARATION ON AID EFFECTIVENESS AND THE ACCRA AGENDA FOR ACTION, point 8 Accra Agenda (2008), https://www.dev-practionners.eu/media/key_documents/34428351.pdf.

¹⁰⁷DANN, *supra* note 6, at 331–32.

¹⁰⁸See Regulation 2024/2509 of the European Parliament and of the Council of Sept. 23, 2024, On the Financial Rules Applicable to the General Budget of the Union, art. 110, 2024 O.J. (L 2509) (EU, Euratom).

¹⁰⁹See G.A., 69th Sess., U.N. DOC. A/RES/69/313 (July 27, 2015) (describing how these challenges are reflected in the Addis Ababa Agenda that provides a new global framework for financing sustainable development by aligning all financing flows and

central network capable of rationalizing and mobilizing the European financing for development machinery.¹¹⁰ With this in mind, it must be highlighted that the NDICI Regulation has kept the door open to the possibility of establishing an EBCD. Article 40 stipulates that the envelope for geographic programs¹¹¹ may be used to contribute to the capital endowment of European and other development finance institutions. Such an institution would provide loans and guarantees in favor of recipient member states, their subdivisions, and public and private enterprises.

The legal framework of the EBCD should reflect the salient features of an international subject endowed with mandate, membership, and governance. In terms of mandate, the establishing agreement should formalize what shared values and principles aid must be based on and what development objectives aid must pursue. Consequently, the EBCD should be provided with a political mandate along the same lines as the EBRD.¹¹² The core of this mandate would consist of the SDGs of 2030 Agenda.¹¹³ In this context, the EBCD could scale up financing for development and the capacity to achieve the SDGs by leveraging, mobilizing and catalyzing resources at all levels.¹¹⁴ Further, it would be committed to respecting environmental and climate objectives by financing projects that are consistent with the standards set out in the Paris Agreement.¹¹⁵ In this context, it would mobilize climate finance from a wide variety of sources, instruments, and channels with the aim of bridging the climate finance gap and accelerating the transition in order to effectively support countries in this process.¹¹⁶

In terms of membership, the EBCD could be composed of both states and multilateral institutions—the EU, the EIB, and other European development and investment banks.¹¹⁷ With reference to multilateral institutions, it is plainly accepted that they can become members of other international organizations.¹¹⁸ Although the EIB does not enjoy an international personality separate from that of the EU,¹¹⁹ its participation in establishing the EBRD can set a precedent to justify its participation in establishing the EBCD.¹²⁰ With reference to states, this category would

policies with economic, social, and environmental priorities). See also INTER-AGENCY TASK FORCE ON FINANCING FOR DEVELOPMENT, FINANCING FOR SUSTAINABLE DEVELOPMENT REPORT (2024), <https://financing.desa.un.org/iatf/report/financing-sustainable-development-report-2024> (financing for development has not kept pace with growing needs amid a changing and less benign global environment. Financial and capital markets remain underdeveloped in many developing countries, with financial volatility contributing to the reduction of long-term investment).

¹¹⁰Under the new EU Budget, Global Europe might receive €200 billion—a 75% increase—to strengthen global partnerships and advance EU priorities worldwide, Europe's Budget: Global Europe (July 2025).

¹¹¹*Supra*, note 100.

¹¹²See generally EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, POLITICAL ASPECTS OF THE MANDATE OF THE EBRD, <https://www.ebrd.com/downloads/about/aspects.pdf>. See *infra* Section F.II.

¹¹³See *supra* Section D.

¹¹⁴See generally *Statement by Multilateral Development Banks: Delivering on the 2030 Agenda*, THE WORLD BANK GROUP, (Oct. 9, 2020), <https://www.worldbank.org/en/news/press-release/2016/10/09/delivering-on-the-2030-agenda-statement>.

¹¹⁵The Paris Agreement is a legally binding international treaty on climate change. It was adopted by 196 Parties at COP 21 in Paris, on December 12, 2015 and entered into force on November 4, 2016. Paris Agreement, Dec. 12, 2015, 3156 U.N.T.S. 79.

¹¹⁶See generally *Joint MDB Methodological Principles for Assessment of Paris Agreement Alignment*, WORLD BANK GROUP, <https://www.worldbank.org/en/publication/paris-alignment/joint-mdb-paris-alignment-approach> (providing the MDBs' alignment approach to the objectives of the Paris Agreement is based on working together to catalyze low-emissions and climate-resilient development).

¹¹⁷The notion of European development banks includes the Council of Europe Development Bank, COUNCIL OF EUROPE DEVELOPMENT BANK, <https://coebank.org/en/>; while the notion of European investment banks includes the Nordic Investment Bank. NORDIC INVESTMENT BANK, <https://www.nib.int/>.

¹¹⁸See HENRY G. SCHERMERS & NIELS M. BLOKKER, INTERNATIONAL INSTITUTIONAL LAW: UNITY WITHIN DIVERSITY 72–73 (5th rev. ed., 2011).

¹¹⁹Opinion of the Advocate General Mancini in Case 85/86, Commission of the European Communities v. Board of Governors of the European Investment Bank, EU:C:1987:504, 1309 (Nov. 27, 1987), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61986CC0085>.

¹²⁰See Giannangelo Marchegiani, *La Banque Européenne d'Investissement [The European Investment Bank]*, in 9 COMMENTAIRE J. MEGRET 561, n. 5 (2000) (describing how in that case, the presence of the EU and all EU Member States

include both non-borrowing states and borrowing states. It might be possible for borrowing countries to be admitted not as full members but as associate members.¹²¹ Opening full membership to borrowing countries, even through the subscription of a minor quota, would allow them to take part in defining the policies of the organization and participating in the decision-making process.¹²² However, the overall voting power of the recipient countries would depend not only on the quotas subscribed but also on the number the recipient countries included in the membership.

In terms of governance, the EBCD would be articulated in a plenary organ (the Board of Governors), a non-plenary organ (the Board of Directors), and a Secretariat headed by a President, plus some Vice-Presidents. The Board of Governors would be composed of representatives of state and non-state members, each of them having voting power proportional to the shares subscribed and vested with the major powers in the EBCD. The President would be the chief of the staff, the legal representative of the EBCD, and would be responsible for conducting their activities in the exclusive interest of the institution. The composition of the Board of Directors might pose some problems. First, it would be necessary to decide whether they will be either independent persons¹²³ or representatives of the members.¹²⁴ Second, it would be necessary to decide the method of election. With reference to this issue, the EBRD Agreement provides for predetermined constituencies. The Board of Directors is composed of 23 members, of whom 11 are elected by governors representing certain European countries plus the EU and the EIB, four are elected by governors representing other European countries, four are elected by governors representing non-European countries, and four are elected by governors representing recipient countries. This machinery may operate as a benchmark for the EBCD.

II. The Policy Mandate

A key point in the EBCD picture would be defining the policy of the institution. The principles of the EU external action are listed in Article 21(1) TEU: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the UN Charter and international law. In 2017, in order to align the EU development policy to the SDGs the EU Member States and the EU institutions adopted the New Consensus on Development Cooperation “Our World, our Dignity, our Future,” under which they will implement a rights-based approach to development cooperation, including human rights.¹²⁵ However, linking aid provision to respect for human rights conditionality has highlighted some problems. On the one hand, a divergent position between the EU and its Member States has occasionally emerged.¹²⁶ On the other hand, the politicization of the EU aid has raised accusation of neo-colonialism as far as it tends to impose

among the founding members of the EBRD was seen as offering an implicit and unanimous consent, enabling the EIB to take part in the EBRD establishing agreement).

¹²¹COUNCIL OF EUROPE DEVELOPMENT BANK, ARTICLES OF AGREEMENT, art. 3 https://coebank.org/documents/51/CEB_Articles_of_Agreement_August_2023.pdf (envisaging this possibility in the CEB Articles of Agreement where it is contemplated the possibility to conclude association agreements with a European state that is not a member of the CEB. In the CEB domain these agreements were made just once in favor of Yugoslavia).

¹²²See EBRD, *supra* note 23, at Annex A (providing an example with which this choice would be coherent).

¹²³Statute on the European Investment Bank, *supra* note 13, at art. 9.

¹²⁴EBRD, *supra* note 23, at art. 26.

¹²⁵THE NEW EUROPEAN CONSENSUS ON DEVELOPMENT: JOINT STATEMENT BY THE COUNCIL AND THE REPRESENTATIVES OF THE GOVERNMENT OF THE MEMBER MEETING WITHIN THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE EUROPEAN COMMISSION para. 16 (2017), https://international-partnerships.ec.europa.eu/document/download/6134a7a4-3fcf-46c2-b43a-664459e08f51_en?filename=european-consensus-on-development-final-20170626_en.pdf.

¹²⁶See generally Johanne Døhlle Saltnes & Markus Thiel, *The Politicization of LGBTI Human Rights Norms in the EU-Uganda Development Partnership*, 59 J. COMMON MKT. STUD. 108 (2021) (describing that the most significant instance of this divergence was the suspension of the EU aid in favor of Uganda because the anti-LGBTI legislation. Nevertheless, not all the

values and principles alien to recipient countries.¹²⁷ With reference to this accusation it is worth considering that the Chinese aid to development is not subordinated to any human rights conditionality.¹²⁸ The accusation of neo-colonialism is mitigated by the fact that conditions are not imposed but negotiated.¹²⁹ Nevertheless, the outcome of these negotiations may depend on the bargaining power of the parties.

Further to conditions to which aid provision is subordinated, in 2015 the EU development cooperation has significantly changed its aims. In detail, the EU has increasingly used the development policy and its considerable budget to put forward objectives in areas of migration, security, and investments. Driven by pragmatism and interests, the EU development cooperation with African and neighborhood countries has addressed the “root causes” of migration.¹³⁰ In doing so, the EU has moved away from emphasizing developing-country benefit as the main aim of development cooperation towards the “mutual benefit.” The concept of mutual benefit includes the self-interest of a donor and the needs of recipients as two equally legitimate and consistent objectives of a development cooperation.¹³¹ However, the mutual benefits should be based on objective parameters and not dependent on the occasional considerations.

Against this background, an EBCD establishing treaty should be endowed with a specific mandate stipulating in the preamble the values of the institution and in the text the purposes pursued through financing. Values and purposes must be widely acknowledged and shared without being the product of unbalanced and occasional negotiations. In this process, the EBRD treaty could serve as a benchmark. EBRD member countries have agreed to be committed to the principles of multiparty democracy, pluralism, and market economy¹³² and EBRD resources and facilities are applied to implement these purposes.¹³³ The EBCD should follow a similar trail.

III. A Representation for Recipient Countries

A distinguishing feature of international financial institutions is that the voting rights of member countries are not based on the one-state one-vote rule, but rather on the number of shares subscribed in the capital of each institution.¹³⁴ The number of shares is statutorily determined so

EU Member States shared this sanctionary approach in their national development policies: Denmark and the Netherlands supported this suspension while the United Kingdom and Sweden decided not to invoke a suspension).

¹²⁷See Saltnes & Thiel, *supra* note 126, at 120 (detailing that postcolonial studies have demonstrated that claims of universal justice and principles developed in the Global North amount a form of neo-colonial intervention in the Global South). See generally Kevin Gray & Barry K. Gilles, *South–South Cooperation and the Rise of the Global South*, 37 *THIRD WORLD Q.* 557 (2016) (explaining how the term “Global South” has emerged in relation to countries in the southern hemisphere working in collaboration on political, economic, social, environmental, cultural, and technical issues. It refers to the long-term goal of pursuing world economic changes that mutually benefit countries in the Global South).

¹²⁸*Beijing Declaration of the Forum on China-Africa Cooperation*, FORUM ON CHINA-AFRICA COOPERATION, (Sept. 25, 2009), para. 4, https://www.focac.org/eng/zywx_1/zywj/200909/t20090925_8079752.htm (detailing how the Beijing Declaration of the Forum on China-Africa Cooperation (2000) has highlighted that each country has the right to choose its own approaches and models in promoting and protecting human rights. Consequently, any politicization of human rights and the imposition of human rights conditionalities on economic assistance should be vigorously opposed to as they constitute a violation of human rights).

¹²⁹See Chien-Huei Wu, *Beyond European Conditionality and Chinese Non-interference: Articulating E-China-Africa Trilateral Relations*, in CHINA, THE EUROPEAN UNION AND GLOBAL GOVERNANCE 106, 112 (Jan Wouters, Tanguy de Wilde, Pierre Defraigne & Jean-Cristophe Defraigne eds., 2012).

¹³⁰See Burni et al., *supra* note 70, at 528.

¹³¹See generally Nies Keijzer & Erik Lundsgaarde, *When “Unintended Effects” Reveal Hidden Intentions: Implications of “Mutual Benefit” Discourses for Evaluating Development Cooperation*, 68 *EVALUATION & PROGRAM PLAN* 210 (2018).

¹³²EBRD, *supra* note 23, at art. 1.

¹³³*Id.* at art. 8. See EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, *POLITICAL ASPECTS*, *supra* note 112.

¹³⁴Stephen Zamora, *Voting in International Economic Organizations*, 74 *AMER. J. INT’L L.* 566, 576–77 (1980) (providing that the departure from the one-state one-vote rule goes back to the Bretton Woods Institutions where each member country enjoys 250 votes plus one vote for each \$100,000 share (World Bank) or 100,000 Special Drawing Rights quota (IMF) in the organization).

that member countries are not free to subscribe the quota they wish and, thus, to achieve the voting rights they want. Asymmetry in voting power between member countries plays a key role in the governance and decision-making process relating to financing.

This asymmetry is even more evident in the case of those institutions where there is a clear distinction between borrowing and non-borrowing members. This is the case of the International Development Association (IDA). The IDA was established under a Convention promoted by the IBRD in 1960¹³⁵ to meet the financial necessities of newly independent countries following the process of decolonization, which did not have sufficient financial creditworthiness to borrow from the IBRD.¹³⁶ Consequently, borrowing is reserved to those countries which do not surpass a certain ceiling in terms of Gross National Income (GNI) per capita.¹³⁷ Borrowing and non-borrowing countries receive different treatment in terms of quotas subscribed and voting rights. The result is that borrowing countries do not enjoy significant voting power in the decision-making process within the Board of Executive Directors.¹³⁸

Asymmetry between borrowing and non-borrowing countries plays a minor role in regional development banks where the establishing agreements reserve to regional borrowing countries a major quota in shares and voting rights.¹³⁹ The IADB was established in 1959 by most of the states of the Americas to promote the acceleration of economic development among members states.¹⁴⁰ The original membership was confined to those states that were already members of the Organisation of American States (Art. II(1), Agreement). This restriction was subsequently dropped, and, in 1976, membership was opened to non-regional countries that are members of the IMF.¹⁴¹ Notwithstanding this enlargement, the voting power of regional borrowing members cannot be reduced below 50.005 per cent of the total voting power (Art. VIII (4)(b), Agreement). The decision to grant resources is taken by the Board of Executive Directors, by a majority of the total voting power of the member countries (Art. VIII(4)(d)(iii)).¹⁴² Currently, the regional borrowing countries as a whole hold a majority of 50.015 per cent of the voting power, which is sufficient to secure decisions.¹⁴³

¹³⁵Articles of Agreement of the International Development Association, Approved for Submission to the Governments by the Executive Directors of the International Bank for Reconstruction and Development on 26, January 1960, Sept. 24, 1960, 439 U.N.T.S. 249. See Leonie Guder, *The International Development Association (IDA)*, in MAX PLANCK ENCYCLOPEDIA OF PUB. INT'L L. para. 9 (2011).

¹³⁶INTERNATIONAL DEVELOPMENT ASSOCIATION, ARTICLES OF AGREEMENT art. V(1) (1960) (describing how the IDA shall provide financing to enhance development in the less-developed areas of the world included within its membership for project of high developmental priority).

¹³⁷*Borrowing Countries*, INTERNATIONAL DEVELOPMENT ASSOCIATION, WORLD BANK GROUP, <https://ida.worldbank.org/en/about/borrowing-countries> (describing how eligibility for IDA financing depends first and foremost on a country's relative poverty, defined as GNI per capita below an established threshold and updated annually: \$1,325 in the fiscal year 2026).

¹³⁸*Id.* at art. VI(4). THE WORLD BANK GROUP, EXECUTIVE DIRECTORS AND ALTERNATIVES (2025), <https://thedocs.worldbank.org/en/doc/bb59d0763541241f684b8e784ea9aa07-0330032021/original/BankExecutiveDirectors.pdf> (providing that Executive Directors are entitled to cast the number of votes of the members by which have been appointed or elected and elected Executive Directors may represent constituencies composed of both borrowing and non-borrowing countries).

¹³⁹JOHN WHITE, REGIONAL DEVELOPMENT BANKS: THE ASIAN, AFRICAN AND INTER-AMERICAN DEVELOPMENT BANKS 26–32 (1972) (discussing that regional development banks were established to raise resources additional to those provided by the international financial institutions and to be more sensitive to local problems).

¹⁴⁰Agreement Establishing the Inter-American Development Bank art. I(1), Apr. 9, 1959, 389 U.N.T.S. 69. See Felipe Herrera, *The Inter-American Development Bank and the Latin American Integration Movement*, 5 J. COMMON MKT. STUD. 172–80 (1966).

¹⁴¹See DIANA TUSSIE, THE INTER-AMERICAN DEVELOPMENT BANK 21–27 (1995) (explaining this enlarged membership had two consequences: on one hand, the capital of the IADB was significantly increased as the new members were non-borrowing European countries; on the other hand, the Latin American character of the IADB was slightly watered).

¹⁴²*Executive Directors and Alternative Executive Directors*, INTER-AMERICAN DEVELOPMENT BANK, <https://www.iadb.org/en/who-we-are/how-we-are-organized/board-executive-directors/executive-directors-and-alternates>.

¹⁴³*Capital Stock and Voting Power*, INTER-AMERICAN DEVELOPMENT BANK, <https://www.iadb.org/en/who-we-are/how-we-are-organized/board-governors/capital-stock-and-voting-power> (discussing that regional non-borrowing countries-Canada and the United States- hold 34,007 per cent and non-regional non-borrowing countries 15,979 per cent).

A similar machinery emerges from the picture of the African Development Bank (AFDB). The AFDB was established in 1963 by the African countries to contribute to the sustainable economic development and social progress of its member states (Art. 1, Agreement).¹⁴⁴ Although membership was originally reserved for African independent states, it was subsequently enlarged to non-regional countries that are contributors to the African Development Fund (Art. 3, Agreement). However, to preserve the African character of the institution, non-regional countries cannot hold more than 40 per cent of the total voting power, whatever their financial contributions (Art. 5(4), Agreement). The decision to grant resources is adopted by the Board of Directors by a two-thirds majority of the voting power represented at the meeting (Art. 35(3) Agreement). This means that some directors expressed by non-borrowing countries must concur.

By contrast, the agreement establishing the Asian Development Bank (ASDB) has provided an open membership from the beginning. The ASDB was established in 1965 by Asian countries to promote economic growth and cooperation in Asia and the acceleration of the process of economic development of developing member countries in the region (Art. 1, Agreement).¹⁴⁵ To counterbalance this open membership, the Agreement stipulates that the percentage of total capital stock held by the regional member countries cannot fall below 60 per cent (Art. 5(3), Agreement). A decision to grant financing is taken by the Board of Directors (Art. 31, Agreement),¹⁴⁶ by a majority of the voting power represented at the meeting.¹⁴⁷ Unlike in the previous regional banks, each director is not obliged to cast as a unit the votes of those countries that have concurred in their election. Directors can also cast their vote in different ways on the same issue splitting the voting power. In this way, the interests of all the members of the constituency can be preserved.

This voting mechanism is replicated in the EBRD establishing Agreement, where it is stipulated that a director representing more than one member may cast separately the votes of the countries which they represent.¹⁴⁸ A similar provision can also be found in the Agreement establishing the Asian Infrastructure Investment Bank (AIIB) (Art. 28 Agreement).¹⁴⁹ Further, these two institutions present a specificity relating to the method of election of a director. Any governor who does not participate in voting for the election or whose votes do not contribute to the election of a director may assign the votes to which they are entitled to an elected director, provided that that such governor shall first have obtained the consent of all those governors who elected that director to that assignment (Annex B, sec. D, EBRD Agreement and Schedule B, para. 9, AIIB Agreement). This specificity is a clear advantage for minor recipient countries, which can increase the voting power of a constituency in exchange for a favorable approach to their requests for financing.

¹⁴⁴Final Act of the Conference of Finance Ministers on the Establishment of the African Development Bank, Aug. 4, 1963, 510 U.N.T.S. 48. See EDWARD P. ENGLISH & HARRIS M. MULE, *THE AFRICAN DEVELOPMENT BANK* (1996).

¹⁴⁵Agreement Establishing the Asian Development Bank, Dec. 4, 1965, 571 U.N.T.S. 132 [hereinafter ASDB Agreement]. See ASIAN DEVELOPMENT BANK, AGREEMENT ESTABLISHING THE ASIAN DEVELOPMENT BANK, <https://www.adb.org/documents/agreement-establishing-asian-development-bank-adb-charter> (providing an updated version); NIHAL KAPPAGODA, *THE ASIAN DEVELOPMENT BANK* 16 (1995) (discussing that Japan, Australia and New Zealand are considered regional members but being developed countries are no eligible for financing).

¹⁴⁶ASDB Agreement, *supra* note 145, at art. 30 (providing that, more precisely, eight Executive Directors are elected by the Governors representing regional member countries and four are elected by the Governors representing non-regional member countries).

¹⁴⁷ASIAN DEVELOPMENT BANK, ANNUAL REPORT 2016: MEMBERS, CAPITAL STOCK, AND VOTING POWER (2016), <https://data.adb.org/sites/default/files/adb-members-capital-stock-voting-power.pdf> (describing how the cumulative voting power of the regional developing members accounts for nearly 46 per cent of the capital and as such is not sufficient to secure a positive decision. This cipher is calculated by subtracting the voting power of Australia, Japan and New Zealand).

¹⁴⁸EBRD, *supra* note 23, at art. 29(3).

¹⁴⁹ASIAN INFRASTRUCTURE INVESTMENT, ARTICLES OF AGREEMENT, https://www.aiib.org/en/about-aiib/basic-documents/_download/articles-of-agreement/basic_document_english-bank_articles_of_agreement.pdf. See Xuan Gao & Peter Quayle, *Asian Infrastructure Investment Bank*, in MAX PLANCK ENCYCLOPEDIA OF PUB. INT'L L. (2018) (providing further information on the AIIB).

Against this background, the EBCD executive board should be composed of directors elected by these constituencies: the EU, the EU countries, other European countries, non-European countries, European regional development banks, and recipient countries. Each director should have a number of votes corresponding to the votes of the members which have contributed to their election. Nevertheless, a director should be able to cast separately the votes of the members they represent. Further, any governor who does not participate in voting for the election or has not concurred with the election of a director should be able to assign the votes to which they are entitled to an elected director, provided that that the governor has obtained the consent of all those governors who elected that director. This machinery, combined with adequate voting power, would allow recipient countries to bring their influence in the life of the institution.

G. Conclusion

The EU and its Member States are the major aid donors in the world. Nevertheless, the EFAD machinery is characterized by fragmentation and overlap, resulting in inefficiencies. The Wieser Report had envisaged three options to overcome these flaws, none of which was finally acknowledged. EU institutions merely decided to improve the status quo. Based on coordination, the status quo may reduce without eliminating overlap and fragmentation but does not ensure coherency in delivering a development policy.

This flawed picture calls for the creation of a single financial institution in the field of European cooperation for development. It will not replace the current European picture composed of the EU, the EU Member States, and the European regional development institutions. Such an institution would ensure coherence in formulating and implementing global development goals and strategies, based on shared values and principles. Membership would include many subjects: the EU, the EU countries, other European countries, non-European countries, the regional development institutions (EIB, EBRD, CEB, NIB), and the recipient countries. Values and principles as well as goals and strategies should be formulated in the mandate of this institution and implemented under the decisions to provide resources. In this context, the recipient countries should be endowed with sufficient voting power to weigh in the decision-making process. At the time of writing, the proposal for establishing an EBCD seems to have been definitively put aside. Nevertheless, the idea of establishing an EBCD is not dead: it is merely waiting for a better time.

A stimulus for resuming this proposal can come from various directions: the need for aid optimization in the face of the decision of the US administration to reduce the funds earmarked for development cooperation and as a consequence of the diversion of resources from cooperation to rearmament by other major western donors; the necessity to prevent China from further strengthening her role as global aid provider especially, in Africa; and the necessity to ensure an adequate representation for recipient countries in the EFAD machinery, as indicated by the SDGs.

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