



## Sustaining EU Financing for Security and Development: The Difficult Case of the African Peace Facility

### Summary

Africa's peace and security architecture needs European support to manage sustainable, comprehensive peacebuilding on the continent, thereby establishing the necessary conditions for socio-economic development. This is a long-term process which requires political commitment and reliable financing.

Since 2004, the African Peace Facility (APF) has become invaluable for supporting African Union (AU)-led peace support operations (PSOs). Its added value and potential for supporting African peacebuilding have been confirmed by independent evaluations in 2005 and 2011. The AU and EU Commissions are enthusiastic about continuing the APF cooperation and improving the instrument's flexibility and efficiency.

The APF is financed from the European Development Fund (EDF) for legal reasons: the European Union Treaties do not allow Community funds to finance military operations. The EDF is not part of the EU budget but is funded directly by member states and has different rules. This was meant to be a temporary arrangement and is unsustainable, especially if member states decide to include the 11<sup>th</sup> EDF in the 2014–2020 EU budget. In the medium term the whole spectrum of EU relations with African, Caribbean and Pacific (ACP) partners and the corresponding financial instruments will be under review when the Cotonou Agreement expires in 2020.

Aside from these technical issues, the main problem for the APF is its capacity. In its present form it is unlikely to

be able to meet demand in the next few years as pressure for expanding the AU mission in Somalia grows, and new missions become necessary. A sustainable source of funding for PSOs in Africa will have to be found. The upcoming EU budget negotiations provide an opportunity to reconsider this complex issue.

### The choice for the EU boils down to three options:

1. Continue to fund the APF from the EDF, especially if the EDF remains outside the EU budget until 2020.
2. Finance the APF from the EU budget, possibly combining it with the Instrument for Stability (IfS) or the Common Foreign and Security Policy (CFSP) instrument.
3. Create an entirely new instrument outside the EU budget specifically for supporting PSOs conducted by non-EU multilateral organisations.

The EU and its member states have a strategic interest in long-term peace and stability in Africa. Europeans also have a moral duty to contribute to conflict prevention and peaceful relations within and between societies in Africa and elsewhere. Paying the expenses of third country soldiers is a necessary component of the shared strategy for reaching these goals, and providing an adequate financial instrument should not be beyond Europe's capabilities. The third option would provide the best source of predictable funding for supporting PSOs in Africa and potentially Asia and the Middle East also.

## 1. Financing EU peace and security policy

The negotiations for the 2014–2020 EU budget are a chance to reconsider the issue of how the EU should finance peacebuilding as part of its global development policy and external action. Some EU officials have expressed hope that the negotiations process will prompt EU institutions and member states to further develop joint strategies, together with partner organisations, for addressing security and development challenges.

Current arrangements to finance EU peace and security policy are quite flexible with three ‘standing’ instruments plus the ad-hoc Athena instrument which funds the common costs of EU military operations. The choice of instrument depends on the political context of a crisis, the constellation of actors in Europe pushing for a given operation, and the decision about what kinds of means (civilian, European military, third-country military) are best suited to the case at hand.

Instrument	APF	IFS	CFSP	Athena
<b>Responsible EU Institution</b>	EEAS/Comm	EEAS/Comm	EU Council	EU Council
<b>Type of Operation Financed</b>	AU-led peacebuilding in Africa	Conflict and crisis prevention	CFSP except military costs	CFSP/ CSDP military ops
<b>Actors financed</b>	Military/ Civilian	Civilian	Civilian	Military
<b>Budget 2007–2013</b>	€ 470 million	€ 2062 million	€ 1980 million	c. € 520 million (2004–2010)
Source: Author, compiled from public EU sources				

## 2. The African Peace Facility

The APF was created by an EU Council Decision in December 2003 after a request from the AU for predictable funds to support peace and security in Africa. As well as operations, the instrument supports the structures of the African Peace and Security Architecture, including the AU’s Peace and Security Council, the Panel of the Wise, the African Standby Force and the Continental Early Warning System and response mechanisms (ERMs).

The APF’s added value and potential have been confirmed by independent evaluations contracted by the Commission in 2005 and 2011. The AU and EU Commissions are enthusiastic about continuing the APF cooperation and improving the instrument’s flexibility and efficiency. A 2008 study published by the European Parliament noted that the

instrument is comparatively small and its effectiveness could be improved if its scope was widened.

Requests for APF funding can be submitted to the EU Commission by the AU or an African regional organisation with a peacebuilding mandate, such as the Economic Community of West African States (ECOWAS). The Commission draws up a plan for supporting the intervention, which is discussed in the relevant Council working groups before going to the EU Political and Security Committee for approval. This process can be undertaken in as little as two or three days.

The APF has supported several PSOs since 2004, including in Sudan (AMIS), Somalia (AMISOM), the Central African Republic (MICOPAX) and the Comoros (AMISECC). Since 2004 some € 740 million has been channelled through the instrument. The APF can be topped up through voluntary member state contributions, as in the case of the AMIS mission where eight EU members allocated an extra € 36 million.

The APF is an innovative instrument in that it is partly used to pay the expenses of AU soldiers in the field. This is widely considered to be an essential component of the shared AU/EU strategy for peace and security. However it is this innovation that creates legal difficulties for the EU, since the EU Treaties do not allow the community budget to finance military operations.

The APF’s legal basis is in Article 11 of the Cotonou Agreement: ‘In situations of violent conflict the Parties shall take *all suitable action* to prevent an intensification of violence, to limit its territorial spread, and to facilitate a peaceful settlement of the existing disputes.’

This clause was held to permit financing for the APF from the EDF, which member states fund in addition to their EU budget contributions. The arrangement was only ever meant to be temporary, and although several Council Decisions since 2004 have re-iterated that a permanent solution is needed, no concrete steps have been taken. On 12 April 2011 EU member states approved a Commission proposal to replenish the APF until the end of 2013.

## 3. A sustainable source of funding is needed

Well-informed advisory groups have called for a sustainable source of funding for the APF. In May 2007 the OECD-sponsored Africa Partnership Forum called for ‘a new complementary Peace Facility, in order to provide more secure, predictable, flexible and better coordinated funding’ for civilian and military capacity building in Africa. In its December 2010 report, the Western European Union pointed out that while it is cheaper for the EU to pay for African-led and staffed missions than to send European personnel to African trouble-spots, the possibilities for existing EU financial instruments to fund the AU’s costs are limited.

	PSOs	Capacity Building	ERMs	Reserve	Total
<b>9th EDF 2004–08</b>	€ 396.5 m	€ 27 m		€ 16.5 m	€ 440 m
<b>10th EDF 2009–13</b>	€ 200 m	€ 65 m	€ 15 m	€ 20 m	€ 300 m
<b>2009–10</b>	€ 122 m	€ 10 m	€ 15 m	€ 2 m	
<b>2011–13 forecast</b>	€ 120–140 m	€ 55 m		€ 15 m	€ 339–359 m
<b>Shortfall forecast</b>					€ 39–59 m

Source: Author, compiled from public EU sources

There are two further reasons for resolving the APF funding issue. First, while PSOs are essential for providing the basic conditions for development, especially in fragile states, funds for supporting them are not normally considered Official Development Assistance (ODA) by the OECD. The numbers are currently small in comparison to European aid budgets, but if they were to increase as a consequence of greater demand for PSOs the justification for member states to classify their entire EDF contributions as ODA would become more tenuous.

Second, the APF's capacity is unlikely to be able to meet demand over the next few years. Expanding the AMISOM mission in Somalia, which currently does not secure all of Mogadishu, would require more soldiers and money. It is also highly likely that new AU missions may be required: in Southern Sudan the high risk of ethnic conflict and continued tension with the North complicates the challenge of building a new country virtually from scratch, while in Ivory Coast an ECOWAS mission may be needed in the wake of the disputed 2010 elections. A post-Qaddafi Libya could also be a candidate for an AU mission.

Nevertheless, neither the Commission nor the member states which provide the biggest APF contributions have shown much interest in making a change. France's position is that the status quo gives the AU planning security and should remain. In mid-March the German government asked the legal services of the Council and the EEAS to provide a written opinion on whether options for funding the APF have changed under the Lisbon Treaty.

#### 4. Legal considerations

Resolving the thorny legal problems raised by the APF is not easy for a Union reliant on its legal framework. European jurisprudence has started to move towards a more pragmatic interpretation of the EU Treaties with regard to addressing security-related development challenges, but there are limits, particularly regarding the Commission's competencies.

In early 2005 the Commission asked the European Court of Justice (ECJ) to annul a 2004 Council Decision to fund an ECOWAS small arms and light weapons (SALW) project with a € 515,000 grant from the CFSP budget. The Commission objected on the grounds that measures to control SALW were crucial to preventing fragility in developing countries and thus should fall within the realm of Community development policy.

The ECJ ruminated over its decision for three years, during which time the Commission kept security and development policy largely separate. In May 2008 the Court finally upheld the Commission's complaint, arguing that under its case law a measure that may be adopted under the European Communities Treaty cannot be adopted under the CFSP, which has its legal basis in the Treaty on European Union (TEU).

The ECOWAS case indicates that the ECJ may consider AU-led PSOs to be development programmes falling under Commission competence and therefore eligible for funding from the EU budget. However, the issue is far from settled. The TEU clearly states that expenditure arising from operations with military or defence implications may not be charged to the EU budget.

The APF guidelines are clear about eligible expenses, which include soldiers' per diems and other expenses related to supporting an operation in the field, but ammunition, weapons, soldiers' salaries and military training are explicitly ineligible. While this clause could be interpreted as precluding military *action* under the APF, it is unlikely that PSOs could have no 'military or defence implications' which would prevent them being funded from the EU budget.

An ECJ decision is, therefore, unlikely to be sufficient to enable budgetisation of the APF, either as part of a budgetised EDF or separately under Heading IV. A Council Decision clarifying the legal aspects would probably be required, if not an amendment to the TEU.

#### 5. Options

**There appear to be three options for providing EU funding support for African PSOs:**

##### 1. Retain the status quo; continue to finance the APF from the EDF

The status quo can be maintained until 2020 as long as the EDF is not budgetised. If the EDF is budgetised from 2014 the legal issues will become acute. While pragmatic, the APF does not sit comfortably with the EDF's *raison d'être* – to eradicate poverty in ACP countries. Financing more PSOs from the EDF would inevitably involve trade-offs with development programmes. This could call into question the independence of aid and the principle that crisis management and security should not be funded by development instruments.

## 2. Fund the APF from the EU budget, possibly in combination with the IfS or the CFSP

The Lisbon Treaty may open up possibilities for a new peacebuilding instrument financed by the EU budget. This would need further clarification by the EU Council and possibly a Treaty amendment. An advantage of financing the APF from the EU budget is that the instrument would probably be eligible for contributions from EU aid from the ENPI and DCI and would, therefore, become deployable more widely. On the other hand, integrating the APF into the IfS would put further pressure on funding competing priorities under Heading IV, while the special character of the IfS as a civilian instrument would need to be protected.

Some EU officials and experts have suggested that extending the CFSP instrument to cover PSOs in Africa may be the best option. However, the CFSP instrument finances the EU's foreign and security policy and is generally deployed with European interests in mind. It is not, therefore, easily compatible with the APF's guiding principles, particularly of AU ownership. In any case, the limited size of the instrument is already a constraint on funding actions envisaged in the CFSP policy framework. The European Parliament would also be likely to oppose a move to finance the APF from the CFSP budget as it would lose oversight powers, resulting in less transparency in the policy area.

## 3. Create a new instrument outside the EU budget to finance PSOs

A new instrument would not be limited by existing fiscal ceilings or competing priorities under the external relations budget. Should EU member states choose to, they could create a larger fund to support more substantial opera-

tions. A separate EU peace and security fund could help build solidarity between EU and AU member states, improve the predictability of funding for African PSOs, and potentially finance a wider array of peacebuilding activities than Community funds or the EDF are allowed to. It could also potentially be used in other parts of the world in support of UN-mandated operations. However, this option would be very difficult to realise as intra-EU negotiations over who should contribute what, why this instrument in particular should be financed outside the normal EU budget, and the role of member states and EU institutions in its management, would be required.

## 6. Conclusions

The European Union and its member states have a strategic interest in long-term peace and stability in Africa. Europeans also have a moral duty to contribute to conflict prevention and peaceful relations within and between societies in Africa and elsewhere. Paying the expenses of third country soldiers is a necessary component of the shared strategy for reaching these goals, and providing an adequate instrument for enabling this should not be beyond Europe's capabilities.

Of the three options outlined above, the third would provide the best source of predictable funding for supporting PSOs in Africa and elsewhere. It is nevertheless unlikely that the EU and its members can muster the political will to make it happen. An interim approach to build Europe's capacity to address security and development linkages in the next EU budget would be to strengthening existing instruments while exploring options for creating a new fund for financing peacebuilding after 2020.

### Literature

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