Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action

REGULATION (EU) No 236/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 209(1) and 212(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Committee of Regions[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The European Union should adopt a comprehensive set of instruments for financing external action covering a range of policies related to such action, which require specific common rules and procedures for their implementation. Those instruments for financing external action for the period from 2014 to 2020 are: the Development Cooperation Instrument (DCI), as established by Regulation (EU) No 233/2014 of the European Parliament and of the Council[(3)], the European Instrument for Democracy and Human Rights (EIDHR), as established by Regulation (EU) No 235/2014 of the European Parliament and of the Council[(4)], the European Neighbourhood Instrument (ENI), as established by Regulation (EU) No 232/2014 of the European Parliament and of the Council[(5)], the Instrument contributing to Stability and Peace, as established by Regulation (EU) No 230/2014 of the European Parliament and of the Council[(6)], the Instrument for Pre-accession Assistance (IPA II), as established by Regulation (EU) No 231/2014 of the European Parliament and of the Council[(7)], and the Partnership Instrument for cooperation with third countries, as established by Regulation (EU) No 234/2014 of the European Parliament and of the Council[(8)] (hereinafter referred to jointly as ‘the Instruments’ and individually as ‘the Instrument’).

(2) The common rules and procedures should be consistent with the financial rules applicable to the general budget of the Union laid down in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(9)], including the corresponding rules adopted by the Commission[(10)] for implementing that Regulation.

(3) The Instruments generally provide that actions to be funded on their basis should be the object of a multiannual indicative programming, providing the framework within which financing decisions should be adopted in accordance with Regulation (EU, Euratom) No 966/2012, and with the procedures provided for in Regulation (EU) No 182/2011 of the European Parliament and of the Council[(11)].

(4) Financing decisions should take the form of annual or multiannual action programmes and individual measures when following the planning provided for by the multiannual indicative programming, of special measures where required by unforeseen and duly justified needs or circumstances, and of support measures. Support measures may be adopted either as part of an annual or multiannual action programme or outside the scope of indicative programming documents.

(5) Financing decisions should include in an annex a description of each action, specifying its objectives, main activities, expected results, methods of implementation, budget and indicative timetable, any associated support measures and performance monitoring arrangements, and should be approved in accordance with the procedures provided for in Regulation (EU) No 182/2011.

(6) Taking into account the policy programming or financial execution nature of those implementing acts, in particular their budgetary implications, the examination procedure should be used for their adoption, except for individual and special measures below pre-defined thresholds. However, the Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the need for a swift response from the Union, imperative grounds of urgency so require. The European Parliament should be duly informed thereof, in accordance with the relevant provisions of Regulation (EU) No 182/2011.

(7) For the implementation of the Instruments, where the management of the operation is entrusted to a financial intermediary, the Commission decision should cover in particular provisions concerning risk-sharing, transparency, the remuneration of the intermediary responsible for implementation, the use and re-use of funds and of possible profits, and the reporting obligations and control mechanisms, taking into account the relevant provisions of Regulation (EU, Euratom) No 966/2012.

(8) The Union should seek the most efficient use of available resources in order to optimise the impact of its external action. That should be achieved through coherence and complementarity between the Union's instruments for external action, as well as the creation of synergies between the Instruments and other policies of the Union. This should further entail mutual reinforcement of the programmes devised under the Instruments, and, where appropriate, the use of financial instruments that have a leverage effect.

(9) Pursuant to Article 21 of the Treaty on European Union (TEU), the Union's action on the international scene is to be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world, namely democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principle of

equality and solidarity, and respect for the principles of the United Nations Charter and international law.

(10) In line with the commitments of the Union at the 3rd and 4th High Level Fora on Aid Effectiveness (Accra 2008 and Busan 2011), and the recommendation of the Development Assistance Committee of the Organisation for Economic Co-operation and Development ('OECD-DAC') on untying official development assistance (ODA) to the Least Developed Countries and Heavily Indebted Poor Countries, the Commission should untie Union aid to the maximum extent, including for innovative financing mechanisms, and promote the participation of entities from partner countries in contract-award procedures.

(11) In order to ensure the visibility towards the citizens of the beneficiary countries and the Union citizens, of the Union's assistance, there should be, where appropriate, targeted communication and information by adequate means.

(12) The Union's external action under the Instruments should contribute to clear results (covering outputs, outcomes and impacts) in countries benefiting from the Union's external financial assistance. Whenever possible and appropriate, the results of the Union's external action and the efficiency of a particular Instrument should be monitored and assessed on the basis of pre-defined, clear, transparent and, where appropriate, country-specific and measurable indicators, adapted to the specificities and objectives of the Instrument concerned.

(13) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, penalties. Those measures should be carried out in accordance with the applicable agreements concluded with international organisations and third countries.

(14) Provision should be made for financing methods, the protection of the financial interests of the Union, rules on nationality and origin, the evaluation of actions, reporting and review and evaluation of the Instruments.

(15) Without prejudice to cooperation mechanisms developed with civil society organisations at all levels in accordance with Article 11 TEU, stakeholders of beneficiary countries, including civil society organisations and local authorities, have a prominent role to play regarding the external policy of the Union. During the implementation process, in particular the preparation, implementation, monitoring and evaluation of measures taken under this Regulation, it is important to duly consult them to ensure that they play a meaningful role in this process and to duly consider their specificities.

(16) In accordance with Article 208, Article 209(3) and Article 212 of the Treaty on the Functioning of the European Union, and under the terms laid down in the Statute of the European Investment Bank (EIB) and in Decision No 1080/2011 of the European Parliament and of the Council[(12)], the EIB contributes to the implementation of the measures necessary to further the objectives of the Union's development and other external policies, and intervenes in complementarity with the Union's instruments for

external action. Opportunities should be seized to combine EIB financing with Union budgetary resources. The EIB is consulted in the Union programming process where appropriate.

(17) International organisations and development agencies routinely work with non-profit organisations as implementing partners and may have to entrust budget implementation tasks to them in duly justified cases. By way of derogation from point (c) of Article 58(1) of Regulation (EU, Euratom) No 966/2012, provision should be made in this Regulation to allow such tasks to be entrusted to non-profit organisations under conditions equivalent to those applying to the Commission.

(18) In order to enhance partner countries' ownership of their development processes and the sustainability of external aid, and in line with international aid effectiveness commitments entered into by the Union and partner countries, the Union should promote, where appropriate in light of the nature of the action concerned, the use of partner countries' own institutions, systems and procedures.

(19) In line with the European Consensus on Development and the international aid effectiveness agenda, and as underlined by the European Parliament's resolution of 5 July 2011 on the future of EU budget support to developing countries, the Commission's Communication of 13 October 2011 entitled ‘Increasing the impact of EU Development Policy: an Agenda for Change’, and the Council Conclusions on ‘The Future Approach to EU Budget Support to Third Countries’ of 14 May 2012, budget support is to be used effectively to support poverty reduction and the use of country systems, make aid more predictable and strengthen partner countries' ownership of development policies and reforms. The disbursement of forecast budget tranches should be conditional on the progress achieved towards the objectives agreed with partner countries. In countries benefiting from that type of the Union's financial assistance, the Union supports the development of parliamentary control, audit capacities, transparency and public access to information.

(20) Union action aimed at advancing the principles of democracy and strengthening democratisation may be implemented, inter alia, through support to civil society organisations and independent institutions active in this area, such as the European Endowment for Democracy.

(21) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(22) It is appropriate to align the period of application of this Regulation with that of Council Regulation (EU, Euratom) No 1311/2013[13]. Therefore, this Regulation should apply from 1 January 2014 until 31 December 2020,

HAVE ADOPTED THIS REGULATION:

***Changes to legislation:** There are currently no known outstanding effects for the Regulation (EU) No 236/2014 of the European Parliament and of the Council. (See end of Document for details)*

TITLE I

IMPLEMENTATION

Article 1

Subject matter and principles

1 This Regulation lays down the rules and conditions for the provision by the Union of financial assistance to actions, including action programmes and other measures, under the following instruments for financing external action for the period from 2014 to 2020: the Development Cooperation Instrument (DCI), the European Instrument for Democracy and Human Rights (EIDHR), the European Neighbourhood Instrument (ENI), the Instrument contributing to Stability and Peace, the Instrument for Pre-Accession Assistance (IPA II) and the Partnership Instrument for cooperation with third countries (hereinafter referred to jointly as 'the Instruments' and individually as 'the Instrument').

For the purposes of this Regulation, the term 'countries' includes territories and regions, as appropriate.

2 This Regulation does not apply to the implementation of actions financing the Erasmus + programme under Regulation (EU) No 233/2014, Regulation (EU) No 232/2014, Regulation (EU) No 231/2014 and Regulation (EU) No 234/2014. Those actions shall be implemented in accordance with Regulation (EU) No 1288/2013 of the European Parliament and of the Council[(14)], on the basis of the indicative programming documents referred to in the applicable Instrument, while ensuring conformity with those Regulations.

3 The Commission shall ensure that actions are implemented in accordance with the objectives of the applicable Instrument, and in conformity with an effective protection of the financial interests of the Union. The Union's financial assistance provided on the basis of the Instruments shall be consistent with the rules and procedures laid down in Regulation (EU, Euratom) No 966/2012, which provides the basic financial and legal framework for their implementation.

4 In applying this Regulation, the Commission shall use the most effective and efficient implementation methods. Where possible and appropriate in light of the nature of the action, the Commission shall also favour the use of the most simple procedures.

5 Taking into account paragraph 4, in applying this Regulation, the Commission shall favour the use of partner countries' systems when possible and appropriate in light of the nature of the action.

6 The Union shall seek to promote, develop and consolidate the principles of democracy, the rule of law and respect for human rights and fundamental freedoms on which it is founded, on the basis of, where appropriate, dialogue and cooperation with partner countries and regions. The Union shall integrate those principles in the implementation of the Instruments.

Article 2

Adoption of action programmes, individual measures and special measures

1 The Commission shall adopt annual action programmes, based on the indicative programming documents referred to in the relevant Instrument, where applicable. The Commission may also adopt multi-annual action programmes in accordance with Article 6(3).