Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide

REGULATION (EU) No 235/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 March 2014

establishing a financing instrument for democracy and human rights worldwide

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 and 212 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 European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) This Regulation constitutes one of the instruments providing direct support for the Union's external policies and replaces Regulation (EC) No 1889/2006 of the European Parliament and of the Council[(4)]. It establishes a financing instrument for the promotion and support of democracy and human rights worldwide allowing for assistance to be provided independently of the consent of the governments and public authorities of the third countries concerned.

(2) Article 2 of the Treaty on European Union (TEU) provides that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Those values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

(3) Pursuant to Articles 2 and 3(3) TEU and Article 8 of the Treaty on the Functioning of the European Union (TFEU), equality between women and men is a fundamental value and objective of the Union and the Union is to promote and mainstream gender equality in all its activities.

(4) Pursuant to Article 21 TEU the Union's external action is to be guided by the principles which have inspired its own creation, namely 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 United Nations Charter and international law.

(5) Within the framework of the principles and objectives of the Union's external action, the promotion of human rights, democracy, the rule of law and good governance, and of inclusive and sustainable growth, constitute two basic pillars of the Union's development policy. A commitment to respect, promote and protect human rights and democratic principles is an essential element of the Union's contractual relations with third countries.

(6) The Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission of 12 December 2011 entitled ‘Human Rights and Democracy at the heart of EU external action — Towards a more effective approach’ proposed specific measures in order to increase the effectiveness and coherence of the Union's approach to human rights and democracy.

(7) The instrument hereby established is intended to contribute to achieving the objectives of the Union's external action, including those of its development policy, in particular the objectives set out in the Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy entitled ‘The European Consensus’ and in the Commission Communication of 13 October 2011 entitled ‘Increasing the Impact of EU Development Policy: an Agenda for Change’, and the Union's policies relating to human rights, including the objectives outlined in the EU Strategic Framework and Action Plan on Human Rights and Democracy, adopted by the Council on 25 June 2012.

(8) In accordance with the EU Strategic Framework and Action Plan on Human Rights and Democracy, in order to integrate human rights principles in the implementation of this Regulation the Union should apply a rights-based approach encompassing all human rights, whether civil and political, economic, social or cultural.

(9) The Union's contribution to democracy and the rule of law and to the promotion and protection of human rights and fundamental freedoms is rooted in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and other human rights instruments adopted within the framework of the United Nations (UN), as well as relevant regional human rights instruments.

(10) Gender equality, women's rights, including the empowerment of women, and non-discrimination are fundamental human rights and are essential for social justice as well as for fighting against inequalities. Their promotion should be a cross-cutting priority of this Regulation.

(11) Democracy and human rights are inextricably linked and mutually reinforcing, as recalled in the Council Conclusions of 18 November 2009 on democracy support in the EU's external relations. The fundamental freedoms of thought, conscience and religion or belief, expression, assembly and association are the preconditions for political pluralism, democratic process and an open society, whereas democratic

control, domestic accountability and the separation of powers are essential to sustain an independent judiciary and the rule of law which in turn are required for effective protection of human rights.

(12) The task of building and sustaining a culture of human rights and of supporting the emergence of an independent civil society, including by enhancing the role of such a society in the relevant countries and making democracy work for all, though especially urgent and difficult in emerging democracies, is essentially a continuous challenge which belongs first and foremost to the people of the country concerned but which in no way diminishes the commitment of the international community. It requires a range of institutions, including national democratic parliaments and locally elected assemblies, which ensure participation, representation, responsiveness and accountability. In this context, special attention should be paid to countries in transition as well as fragile or post-conflict situations. The experiences gained and lessons learned from the transition towards democracy in the framework of the enlargement and neighbourhood policies of the Union should be taken into account.

(13) In order to address those issues in an effective, transparent, timely and flexible manner after Regulation (EC) No 1889/2006 expires, there is a continued need for specific financial resources and a separate financing instrument that can continue to operate in an independent manner.

(14) Union assistance under this Regulation should be designed in such a way as to complement various other tools for implementing Union policies relating to democracy and human rights. Those tools range from political dialogue and diplomatic demarches to various instruments for financial and technical cooperation, including both geographic and thematic programmes. Union assistance should also complement the more crisis-related actions under the Instrument contributing to Stability and Peace, established by Regulation (EU) No 230/2014 of the European Parliament and of the Council[(5)], including urgent actions needed during the first phases of the transition process.

(15) Under this Regulation, the Union is to provide assistance to address global, regional, national and local human rights and democratisation issues in partnership with civil society. In this regard, civil society is to be understood as spanning all types of social actions by individuals or groups that are independent from the state and whose activities help to promote human rights and democracy, including human rights defenders as defined by the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (‘Declaration on Human Rights Defenders’). In the implementation of this Regulation, due consideration should be given to the Union's local human rights country strategies.

(16) Furthermore, whilst democracy and human rights objectives must be increasingly mainstreamed in all instruments for financing external action, Union assistance under this Regulation should have a specific complementary and additional role by virtue of its global nature and its independence of action from the consent of the governments and public authorities of the third countries concerned. That role should allow for

cooperation and partnership with civil society on sensitive human rights and democracy issues, including migrants' enjoyment of human rights and the rights of asylum seekers and internally displaced persons, providing the flexibility and requisite reactivity to respond to changing circumstances, or needs of beneficiaries, or periods of crisis. This Regulation should also enable the Union to articulate and support specific objectives and measures at international level which are neither geographically linked nor crisis-related and which require a transnational approach or involve operations both within the Union and in a range of third countries. Moreover, this Regulation should provide the necessary framework for operations, such as support for independent election observation missions conducted by the Union (EU EOMs) requiring policy coherence, a unified management system and common operating standards.

(17) Developing and consolidating democracy under this Regulation may possibly include the provision of strategic support to national democratic parliaments and constituent assemblies, in particular to enhance their capacity to support and advance democratic reform processes.

(18) The Union should pay particular attention to countries and urgency situations where human rights and fundamental freedoms are most at risk and where disrespect for those rights and freedoms is particularly pronounced and systematic. In such cases, the political priorities should be to promote respect for the relevant international law, to provide tangible support and means of action to local civil society and to contribute to its work, carried out in very difficult circumstances. In such countries or situations, and in order to address urgent protection needs of human rights defenders and democracy activists, the Union should be able to respond in a flexible and timely manner, through the use of faster and more flexible administrative procedures and by means of a range of funding mechanisms. This should particularly be the case when the choice of procedural arrangements could impact directly on the effectiveness of the measures or could subject beneficiaries to serious intimidation, retaliation or other types of risks.

(19) In situations of conflict, the Union should promote the compliance of all parties to the conflict with their legal obligations under international humanitarian law, in accordance with the relevant EU guidelines. Furthermore, in countries in transition Union assistance under this Regulation should support an appropriate environment enabling political actors to emerge who are committed to a democratic pluralistic multiparty system. This Regulation should also aim to promote democratic structures, division of powers and accountable public authorities.

(20) EU EOMs contribute significantly and successfully to democratic processes in third countries. However, the promotion and support of democracy extends far beyond the electoral process alone and thus all stages of the electoral cycle should be taken into account. Expenditure for EU EOMs should therefore not take up a disproportionate amount of the total funding available under this Regulation.

(21) The importance of the establishment of the position of the EU Special Representative for Human Rights (EUSR) should be underlined. The EUSR should contribute to the unity, consistency and effectiveness of the Union's action and human rights policy and

should help to ensure that all Union instruments and Member States' actions are engaged consistently, in order to attain the Union's policy objectives.

(22) 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 this Regulation, other Union instruments for financing external action and other policies of the Union. This should further entail mutual reinforcement of the programmes devised under the instruments for financing external action.

(23) The Union and the Member States are to seek regular exchanges of information and consult each other at an early stage of the programming process in order to promote complementarity among their respective activities. The Union should also consult other donors and relevant actors.

(24) The Commission and the European External Action Service (EEAS) should, as appropriate, hold regular and frequent exchanges of views and information with the European Parliament. In addition, the European Parliament and the Council should be given access to documents in order that they may exercise their right of scrutiny under Regulation (EU) No 182/2011 of the European Parliament and the Council[(6)] in an informed manner. Measures taken under this Regulation should duly take into consideration the views of the European Parliament and of the Council.

(25) The Union, including where appropriate through its delegations, should seek regular exchanges of information and consult with civil society at all levels, including in third countries, as early as appropriate in the programming process, in order to facilitate civil society's respective contributions and to ensure that it plays a meaningful role in that process.

(26) In order to adapt the scope of this Regulation to the rapidly evolving reality in third countries, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the priorities defined in the Annex to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(27) The implementing powers relating to the programming and financing of the actions supported under this Regulation should be exercised in accordance with Regulation (EU) No 182/2011. Given the nature of those implementing acts, in particular their policy orientation nature and their financial implications, the examination procedure should in principle be used for their adoption, except in the case of technical implementing measures of a small financial scale.

(28) Common rules and procedures for the implementation of the Union's instruments for financing external action are laid down in Regulation (EU) No 236/2014 of the European Parliament and of the Council[(7)].