



EUROPEAN COMMISSION

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**establishing common rules and procedures for the implementation of the Union's
instruments for external action**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

A priority for the Commission within the context of the Multiannual Financial Framework (MFF) is to simplify the regulatory environment and facilitate the **availability** of Union assistance to partner countries and regions, civil society organisations, SMEs, etc. to the extent that they contribute to the objectives of the Regulation.

In the implementation of the new Instruments, simplified and flexible decision-making procedures would allow a swifter adoption of implementing measures and thus of delivery of EU assistance, in particular for countries in crisis, post-crisis and fragility.

Furthermore, the revision of the Financial Regulation, which is particularly substantial with regard to the special provision on external actions, will facilitate the participation of civil society organisations and small businesses in funding programmes, for example by simplifying rules, reducing the costs of participation and accelerating award procedures. The Commission intends to implement this Regulation using the new flexible procedures provided for in the new Financial Regulation.

Against this background, the Commission proposes a set of simplified and harmonised implementing rules and procedures applicable to four geographic instruments, i.e. the DCI, ENI, IPA, and PI, and to the three thematic instruments IfS, EIDHR, and INSC. In the case of the IPA and ENI, however, the special characteristics of pre-accession and cross-border cooperation will require additional and specific implementing rules and procedures complementing as 'lex specialis' the common set provided by the Common Implementing Regulation.

Both the EDF and the Greenland Decision will remain outside the scope of that Regulation given the specificity of their funding mechanisms.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Public Consultation

The Commission held a public consultation on future funding for EU external action between 26 November 2010 and 31 January 2011. This process was based on an online questionnaire accompanied by a background paper 'What funding for EU external action after 2013?'. In general, the replies did not suggest the need for a substantial change in the current implementing mechanisms, although a significant majority of respondents supported increased flexibility and simplification in implementation.

Collection and use of Expertise

The Commission performed an internal review of different reports (evaluations, audits, studies, mid-term reviews). The review looked at what worked and what did not work, and drew lessons for the drafting of the financial instruments.

The review showed that the current Instruments contributed to progress towards the MDGs in developing countries. The implementation modalities, such as budget support and the "sector-wide approach", have allowed deeper cooperation with partner countries and a more efficient division of labour through co-financing between donors.

Nevertheless, the review identified a number of shortcomings. The current implementation process was assessed as too complex and does not allow swift adjustments if required. These shortcomings have been directly addressed in the present Regulation.

3. LEGAL ELEMENTS OF THE PROPOSAL

Part Five, Title III, Chapter 1 of the Treaty of the Functioning of the European Union, provides the legal framework for cooperation with partner countries and regions. Accordingly, the proposed Common Implementing Regulation is based on Articles 209(1) and 212(2) of the Treaty, and is presented by the Commission in accordance with the procedure laid down in Article 294. Articles 310 to 320 TFEU being applicable to Euratom (see Article 106a Euratom), the proposal can also cover the implementation of financial cooperation under the INSC.

4. BUDGETARY IMPLICATION

N/A

5. MAIN ELEMENTS

(1) Title I: Implementation – Articles 1 to 3

Article 1 (Subject matter and principles) sets out the objectives of the Regulation which are to provide a harmonised set of implementing rules for Relex Instruments, to protect the financial interests of the Union, and to promote simplification and flexibility in implementing these Instruments.

Article 2 (Adoption of Action Programmes, Individual Measures and Special Measures) provides that financing decisions taken by the Commission are to be in the form of action programmes, based on the multiannual programming documents. Exceptionally, yet in line with the multiannual programming documents, individual measures can be adopted outside the action-programme framework. In the event of unforeseen and duly justified cases, the Commission may adopt special measures not provided for in the multiannual programming documents. The Article includes the comitology rules that need to be followed for the adoption of the mentioned decisions, as well as the possible exceptions thereto.

Article 3 (Support measures) defines the types of expenditure that represent support to the implementation of this Regulation and which may be covered by Union financing (e.g. preparation, follow up, monitoring, audit and evaluation activities, provision of information and communication efforts). These measures can be financed outside the scope of the programming documents.

(2) Title II: Provisions on the financing methods – Articles 4 to 6

Without being exhaustive and on the basis of current practice and identified needs, **Articles 4 to 6** cite the types of financing that may be used under this Regulation. The introduced modifications take into account the provisions of the latest Financial Regulation. In particular, Article 4 provides for innovative instruments, such as loans, guarantees, equity and risk-sharing instruments, and describes possible arrangements with respect to taxes, duties and charges. It describes that the measures under this Regulations may be implemented directly by the Commission or indirectly by entrusting budget implementation tasks to any entity or person listed in the Financial Regulation. This provision also defines the type of co-financing (parallel or joint).

Article 7 (Protection of the financial interests of the Union) lays down measures to protect the Union's financial interests, and in particular to enable it (notably the Commission, the Court of Auditors and OLAF) to carry out all the necessary checks on the measures implemented.

(3) Title III: Rules on nationality and origin for public procurement, grant and other award procedures – Articles 8 to 12

Articles 8 to 11 (Rules on nationality and origin for public procurement and grant and other award procedures) lay down the conditions governing access to public procurement and grant awards for the purposes of implementing the Regulation. The proposed provisions are significantly simplified and indicate the objective to work towards untied aid delivery. Nevertheless, the articles introduce in detail the conditions for eligibility of third countries (reciprocity requirement, participation in the implemented programme, non-eligibility of certain countries, etc.) and exceptions thereto (unavailability of products or services provided, extreme urgency, triangular cooperation, etc.).

Article 12 (Evaluation) commits the Commission to regularly evaluate the results of the implemented policies and programmes, sectoral policies and the effectiveness of programming itself. All relevant stakeholders will be associated to the evaluation and the report will be shared with the Council and the European Parliament.

(4) Title IV: Final provision – Articles 13 to 17

Article 13 (Annual report) provides for an annual Commission report on the progress and implementation of this Regulation. The report will be submitted to the European Parliament and to the Council.

Article 14 (Climate action and biodiversity expenditure) provides for a specific tracking system based on the OECD methodology ('Rio markers') .

Article 15 (Committees) describes the involvement of the relevant committees in the implementation of this Regulation, adapted to the new comitology regulation¹.

Article 16 (Review and evaluation of the Instruments) provides that by mid 2018 the Commission shall prepare and submit a report evaluating the implementation of this

¹ Regulation (EU) No 182/2011. An Observer from the European Investment Bank may take part in the Committees' proceedings with regard to questions concerning the Bank, in accordance with the rules of procedure of the committee (see Standard Rules of Procedure for Committees, OJ C 206, 12.7.2011, p.11).

Regulation to the European Parliament and the Council, and, if appropriate, present a legislative proposal introducing the necessary modifications. Likewise, this report will assess the impact of the measures adopted on the basis of this Regulation.

Article 17 (Entry into force) provides for the entry into force of the Regulation and its application from 1 January 2014, without setting an expiration date.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing common rules and procedures for the implementation of the Union's instruments for external action

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 Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Union should adopt a comprehensive set of instruments covering a range of policies related to external action, which require specific common rules and procedures for their implementation. These are: the Development Cooperation Instrument ('DCI'), the European Instrument for Democracy and Human Rights ('EIDHR'), the European Neighbourhood Instrument ('ENI'), the Instrument for Stability ('IfS'), the Instrument for Nuclear Safety Cooperation ('INSC'), the Instrument for Pre-accession Assistance ('IPA') and the Partnership Instrument ('PI').
- (2) These 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 the Financial Regulation², and with the procedures provided for in Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers³.
- (3) The financing decisions should take the forms 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 justified needs, and of Support Measures.

² As referred to in recital 6.

³ OJ L 55, 28.2.2011, p. 13.

- (4) Taking into account the policy programming or financial execution nature of those implementing acts, in particular their budgetary implications, the examination procedure should in general be used for their adoption, except for measures of a small financial scale. 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 requires.
- (5) In financing decisions the description of each action, specifying its objectives, main activities, expected results, prospective budget and timetable and performance monitoring arrangements should be further approved in accordance with the procedures provided for in Regulation (EU) No 182/2011.
- (6) For the implementation of financial instruments, when the management of the operation is entrusted to a financial intermediary, the Commission decision should cover in particular provisions concerning risk-sharing, the remuneration of the intermediary responsible for implementation, the use and re-use of the funds and the possible profits.
- (7) The common set of rules and procedures should be consistent with the financial rules applicable to the annual budget of the Union laid down in a Regulation of the European Parliament and of the Council, hereinafter referred to as "the Financial Regulation"⁴, such reference being made in all instances to the latest version of that Regulation in force, and including the corresponding rules adopted by the Commission⁵ for implementing the Financial Regulation.
- (8) While financing needs of the Union's external assistance are increasing, the economic and budgetary situation of the Union limits the resources available for such assistance. The Commission must therefore seek the most efficient use of available resources, in particular by using financial instruments that have a leverage effect. Such leverage effect is increased by allowing funds invested and generated by the financial instruments to be used and re-used.
- (9) The financial interests of the European 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. These measures should be carried out in accordance with the applicable agreements concluded with international organisations and third countries.
- (10) Further provisions should be made for financing methods, the protection of the Union's financial interests, rules on nationality and origin, and evaluation of the Instruments,

⁴ Currently Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).

⁵ Currently Commission Regulation (EC, EURATOM) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1).

HAVE ADOPTED THIS REGULATION:

TITLE I
IMPLEMENTATION

Article 1

Subject matter and principles

1. This Regulation establishes the rules and conditions for providing the Union's financial assistance to actions, including action programmes and other measures, under the following Instruments: the Development Cooperation Instrument ('DCI'), the European Instrument for Democracy and Human Rights ('EIDHR'), the European Neighbourhood Instrument ('ENI'), the Instrument for Stability ('IfS'), the Instrument for Nuclear Safety Cooperation ('INSC'), the Instrument for Pre-accession Assistance ('IPA') and the Partnership Instrument ('PI'), hereinafter also referred to jointly as 'the Instruments' and singly as 'the applicable Instrument'.
2. 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 financial assistance provided on the basis of the Instruments shall be consistent with the rules and procedures laid down in the Financial Regulation, which provides the basic financial and legal framework for their implementation.
3. In applying this Regulation, the Commission shall, where possible and appropriate in light of the nature of the action, favour the use of the most flexible procedures in order to ensure an effective and efficient implementation.

Article 2

Adoption of action programmes, individual measures and special measures

1. The Commission shall adopt annual or multi-annual action programmes, where required based on the indicative programming documents referred to in the applicable Instrument.

Exceptionally, in particular where an action programme has not yet been adopted, the Commission may, on the basis of the indicative programming documents, adopt individual measures under the same rules and procedures as for action programmes.

In the event of unforeseen and duly justified needs, circumstances or commitments, the Commission may adopt special measures not provided for in the indicative programming documents. Special measures may also be used to ease the transition from emergency aid to long-term development operations, including measures to better prepare people to deal with recurring crises.

2. Action programmes and individual measures provided for in paragraph 1 for which the Union's financial assistance exceeds EUR 10 million and special measures for which the Union's financial assistance exceeds EUR 30 million shall be adopted in accordance with the examination procedure referred to in Article 15(3).

That procedure shall not be required for action programmes and measures below the above-mentioned thresholds, and for non substantial amendments thereto. Non-substantial amendments are technical adjustments such as extending the implementation period, reassigning funds within the forecast budget, or increasing or reducing the size of the budget by less than 20 % of the initial budget, provided these amendments do not substantially affect the objectives of the initial action programme or measure. In such case, action programmes and measures and non-substantial amendments thereto shall be communicated to the European Parliament and to the Council within one month of their adoption.

3. On duly justified imperative grounds of urgency, such as crises, post crisis and fragility situations or threats to democracy, the rule of law, human rights or fundamental freedoms, the Commission may adopt immediately applicable implementing acts, including amendments to existing action programmes and measures, in accordance with the procedure referred to in Article 15(4).
4. Appropriate environmental screening, including for climate change and biodiversity impacts, shall be undertaken at project level including where applicable environmental impact assessment (EIA) for environmentally sensitive projects, in particular for major new infrastructure. Where relevant, strategic environmental assessments (SEA) shall be used in the implementation of sectoral programmes. The involvement of interested stakeholders in environmental assessments and public access to the results shall be ensured.

Article 3

Support measures

1. Union financing may cover expenditure for the implementation of the Instruments and for the achievement of their objectives, including administrative support associated with the preparation, follow-up, monitoring, audit and evaluation activities directly necessary for such implementation, as well as expenditure at Union delegations on the administrative support needed to manage operations financed under the Instruments.
2. Provided that the activities listed in points (a), (b) and (c) are related to the general objectives of the applicable Instrument implemented through the action, Union financing may cover
 - (a) studies, meetings, information, awareness-raising, training, publication activities and any other administrative or technical assistance expenditure necessary for the management of the actions,
 - (b) research activities and studies on relevant issues and the dissemination thereof,

- (c) expenditures related to the provision of information and communication actions, including corporate communication of the political priorities of the Union.
3. Support measures may be financed outside the scope of indicative programming documents. Where applicable, the Commission shall adopt support measures in accordance with the advisory procedure referred to in Article 15(2).

TITLE II

Provisions on the financing methods

Article 4

General financing provisions

1. The Union's financial assistance may be provided, inter alia, through the following types of financing envisaged by the Financial Regulation:
- (a) grants;
 - (b) procurement contracts for services, supplies or works;
 - (c) budget support;
 - (d) contributions to trust funds set up by the Commission;
 - (e) financial instruments such as loans, guarantees, equity or quasi-equity, investments or participations, and risk-sharing instruments, possibly combined with grants.
 - (f) shareholdings or equity participations in international financial institutions, including regional development banks.

The Union's financial assistance may also be provided, in accordance with the Financial Regulation, through contributions to international, regional or national funds, such as those established or managed by the European Investment Bank, international organisations, Member States or by partner countries and regions, for attracting joint financing from a number of donors, or to funds set up by one or more donors for the purpose of the joint implementation of projects.

2. For the implementation of financial instruments referred to in point (e) above and in accordance with Article 18(4) of the Financial Regulation, revenues and repayments generated by one financial instrument shall be assigned to the corresponding financial instrument as internal assigned revenue. For financial instruments set up during the Multi-annual Financial Framework 2007-2013, these revenues and repayments shall be assigned to the equivalent new financial instrument in the period 2014-2020.
3. The Union's financial assistance shall be implemented by the Commission as provided for by the Financial Regulation, directly by Commission departments, Union delegations and by executive agencies, or indirectly by entrusting budget-

implementation tasks to the entities listed in the Financial Regulation, including under shared management with Member states.

4. The types of financing referred to in paragraph 1 and in Article 6(1), and the methods of implementation referred to in paragraph 3, shall be chosen on the basis of their ability to achieve the specific objectives of the actions, taking into account, inter alia, the costs of controls, the administrative burden, and the expected risk of non-compliance. For grants, this shall include a consideration of the use of lump sums, flat rates and scales of unit costs.
5. Actions financed under the Instruments may be implemented with parallel and joint co-financing.

In the case of parallel co-financing, an action is split into a number of clearly identifiable components which are each financed by the different partners providing co-financing in such a way that the end-use of the financing can always be identified.

In the case of joint co-financing, the total cost of an action is shared between the partners providing the co-financing and the resources are pooled in such a way that it is no longer possible to identify the source of financing for any given activity undertaken as part of the action.

6. While having recourse to a type of financing referred to in paragraph 1 or Article 6(1), cooperation between the Union and its partners may take the form, inter alia, of
 - (a) triangular arrangements by which the Union coordinates with third countries its assistance to a partner country or region,
 - (b) administrative cooperation measures such as twinning between public institutions, local authorities, national public bodies or private law entities entrusted with public service tasks of a Member State and those of a partner country or region, as well as cooperation measures involving public-sector experts dispatched from the Member States and their regional and local authorities,
 - (c) contributions to the costs necessary to set up and administer a public-private partnership, and
 - (d) sector policy support programmes, by which the Union provides support to a partner country's sector programme
 - (e) in the case of the IPA and the ENI, contributions to the countries' participation in Union programmes and agencies.

Article 5

Taxes, duties and charges

Union assistance shall not generate, or activate the collection of specific taxes, duties or charges.

Where applicable, appropriate provisions shall be negotiated with partner countries in order to exempt from taxes, custom duties and other fiscal charges the actions implementing Union's financial assistance. Otherwise, such taxes, duties and charges shall be eligible under the conditions laid down in the Financial Regulation

Article 6

Specific financing provisions

1. In addition to the types of financing referred to in Article 4(1), the Union's financial assistance under the following Instruments may be provided in accordance with the Financial Regulation also through the following types of financing:
 - (a) under the DCI and under the ENI, debt relief, under internationally agreed debt relief programmes;
 - (b) under the DCI and under the IfS, in exceptional cases, sectoral and general import programmes, which may take the form of:
 - (i) sectoral import programmes in kind;
 - (ii) sectoral import programmes providing foreign exchange to finance imports for the sector in question; or
 - (iii) general import programmes providing foreign exchange to finance general imports of a wide range of products;
 - (c) under the EIDHR direct award of:
 - (i) low-value grants to human rights defenders to finance urgent protection actions;
 - (ii) grants to finance actions in the most difficult conditions or situations referred to in Article 2(4) of the EIDHR where the publication of a call for proposals would be inappropriate. Such grants shall not exceed EUR 2 000 000 and shall have a duration of up to 18 months, which may be extended by a further six months in the case of objective and unforeseen obstacles to their implementation.
 - (iii) grants to
 - the Office of the UN High Commissioner for Human Rights;
 - the European Inter-University Centre for Human Rights and Democratisation, providing a European Master's Degree in Human Rights and Democratisation and an EU-UN Fellowship Programme, and its associated network of universities delivering human rights post-graduate diplomas, fully accessible to nationals of third countries.

2. The Union's financial assistance under the IPA and the ENI may be implemented in shared management with Member States, and in indirect management for Cross Border Cooperation under the ENI, provided that the sector-specific and complementing rules required by the Financial Regulation and other appropriate provisions are included in a delegated act adopted on the basis of the applicable Instrument.
3. Budgetary commitments for actions under the IPA and the ENI extending over more than one financial year may be broken down over several years into annual instalments.

Article 7

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures to ensure that, when actions financed under this Regulation are implemented, the financial interests of the European Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery, or where appropriate in cases where the state or a public institution of a third country is the beneficiary, the restitution, of the amounts wrongly paid. Where appropriate, effective, proportionate and deterrent penalties shall also be applied.
2. The Commission and the Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot, over all grant beneficiaries, contractors and subcontractors and other third parties who have received Union funds.

The European Anti-fraud Office (OLAF) may carry out on-the-spot checks and inspections on economic operators concerned directly or indirectly by such funding in accordance with the procedures laid down in Council Regulation (Euratom, EC) No 2185/96⁶ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the European Union, in connection with a grant agreement or grant decision or a contract concerning Union funding.

Without prejudice to the first and second sub-paragraphs, agreements with third countries and international organisations and grant agreements and grant decisions and contracts resulting from the implementation of this Regulation shall expressly empower the Commission, the Court of Auditors and OLAF to conduct such audits, on-the-spot checks and inspections.

TITLE III

Rules on nationality and origin for public procurement, grant and other award procedures

⁶ OJ L 292, 15.11.1996, p. 2.

Article 8

Common rules

1. Participation in the award of procurement contracts, grant and other award procedures for actions financed under this Regulation for the benefit of third parties shall be open to all natural persons who are nationals of, and legal persons which are effectively established in, an eligible country as defined for the applicable Instrument in the following Articles of this Title, and to International Organisations.
2. In the case of actions jointly co-financed with a partner, or implemented through one of the entrusted bodies in indirect management, or implemented through a Trust Fund established by the Commission in accordance with the Financial Regulation, countries which are eligible under the rules of that body, as identified in the agreements concluded with the co-financing or implementing body, or determined in the trust fund constitutive act, shall be eligible notwithstanding the specific rules provided for in the following Articles. The co-financing or implementing body shall in addition agree to apply the eligibility rules laid down in this Regulation as specified in the same agreements.
3. In the case of actions financed by one of the Instruments and, in addition, by another instrument for external action, including the European Development Fund, or of actions of a global, regional or cross-border nature involving also beneficiary countries eligible under the rules of those instruments, the countries identified under any of these Instruments may be considered eligible for the purpose of that action.
4. All supplies and goods purchased under a procurement contract, or in accordance with a grant agreement, financed under this Regulation shall originate from an eligible country. However, they may originate from any country when the use of the competitive negotiated procedure is allowed. For the purposes of this Regulation, the term 'origin' is defined in the relevant Union legislation on rules of origin for customs purposes.
5. The rules under this Title do not apply to, and do not create nationality restrictions for, natural persons employed or otherwise legally contracted by an eligible contractor or, where applicable, subcontractor.
6. Where the Financial Regulation provides for discretion in the choice of the contractor, priority shall be given where appropriate to local and regional procurement.
7. By way of derogation from all other rules, eligibility as defined in this Title may be restricted with regard to the nationality, localisation or nature of applicants, where required by the nature and the objectives of the action and as necessary for its effective implementation. Such restrictions may apply in particular to the participation in awarding procedures in the case of cross-border cooperation actions.

8. Tenderers, applicants and candidates who have been awarded contracts shall respect applicable environmental legislation including multilateral environmental agreements as well as internationally agreed core labour standards⁷

Article 9

DCI, ENI, PI and INSC

1. Tenderers, applicants and candidates from the following countries shall be eligible to funding under the DCI, the ENI, the PI and the INSC:
- (a) Member States, candidate countries and potential candidates as recognised by the Union, and members of the European Economic Area;
 - (b) for the ENI, partner countries covered by the ENI and the Russian Federation when the relevant procedure takes place in the context of the multi-country and cross-border co-operation programmes in which it participates;
 - (c) developing countries and territories, as defined as defined by the Development Assistance Committee of the Organisation for Economic Cooperation and Development ('OECD-DAC'), which are not members of the G-20 group, , and overseas countries and territories covered by Council Decision [2001/822/EC of 27 November 2001⁸];
 - (d) developing countries as defined by OECD-DAC, which are member of the G-20 group, and other countries and territories, when they are beneficiaries of the action financed by the Union under the instruments covered by this Article;
 - (e) countries for which reciprocal access to external assistance is established by the Commission. Reciprocal access may be granted, for a limited period of at least one year, whenever a country grants eligibility on equal terms to entities from the Union and from countries eligible under the Instruments covered by this Article. The Commission shall decide on the reciprocal access and on its duration in accordance with the advisory procedure referred to in Article 15(2), and after consultation of the recipient country or countries concerned; and
 - (f) a Member State of the OECD-DAC, in the case of contracts implemented in a Least Developed Country, as defined by the OECD-DAC.
2. Tenderers, applicants and candidates from non eligible countries or goods from non eligible origin may be accepted eligible by the Commission in the case of:
- (a) countries having traditional economic, trade or geographical links with neighbouring beneficiary countries, or

⁷ The ILO core labour standards, Conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation and the abolition of child labour.

⁸ OJ L 314 of 30.11.2001, p. 1

- (b) implementation of triangular cooperation arrangements with third countries; or
 - (c) urgency or of unavailability of products and services in the markets of the countries concerned, or other duly substantiated cases where the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.
3. For actions implemented in shared management, the relevant Member State to which the Commission has delegated implementation tasks is entitled to accept as eligible, on behalf of the Commission, tenderers, applicants and candidates from non eligible countries in accordance with paragraph 2, or goods from non eligible origin in accordance with Article 8(4).

Article 10

IPA

1. Tenderers, applicants and candidates from the following countries shall be eligible for funding under the IPA:
- (a) Member States, beneficiary countries covered by the IPA, members of the European Economic Area and partner countries covered by ENI, and
 - (b) donor countries for which reciprocal access to external assistance is established by the Commission under the conditions laid down in Article 9(1)(e).
2. Tenderers, applicants and candidates from non eligible countries or goods from non eligible origin may be accepted eligible by the Commission in duly substantiated cases,
- (a) if the eligibility rules would make the realisation of an action impossible or exceedingly difficult on the basis of the unavailability of products and services in the markets of the countries concerned, or extreme urgency, or
 - (b) for implementing triangular cooperation arrangements with third countries.
3. For actions implemented in shared management, the relevant Member State to which the Commission has delegated implementation tasks is entitled to accept as eligible, on behalf of the Commission, tenderers, applicants and candidates from non eligible countries in accordance with paragraph 2, or goods from non eligible origin in accordance with Article 8(4).

Article 11

IfS and EIDHR

1. Without prejudice to the limitations inherent to the nature and the objectives of the action as provided for in Article 8(7), participation in the award of procurement contracts or grants, as well as the recruitment of experts, shall be open without limitations under the IfS and EIDHR.

2. Under the EIDHR the following bodies and actors shall be eligible for funding in accordance with Articles 4(1) and 6(1) (c):
 - (a) civil society organisations, including non-governmental non-profit organisations and independent political foundations, community based organisations and private sector non-profit agencies, institutions and organisations and networks thereof at local, national, regional and international level;
 - (b) public sector non profit-agencies, institutions and organisations and networks at local, national, regional and international level;
 - (c) national, regional and international parliamentary bodies, when this is necessary to achieve the objectives of the instrument and the proposed measure cannot be financed under another Union external assistance instrument;
 - (d) international and regional inter-governmental organisations;
 - (e) natural persons, entities without legal personality and, in exceptional and duly justified cases, other bodies or actors not identified in this paragraph, when this is necessary to achieve the objectives of the instrument.

Article 12

Evaluations of actions

1. The Commission shall regularly monitor and review its actions, and evaluate the results of the implementation of sectoral policies and actions, and the effectiveness of programming, where appropriate by means of independent external evaluations, in order to ascertain whether the objectives have been met and to enable it to formulate recommendations with a view to improving future operations.
2. The Commission shall send its evaluation reports to the European Parliament and to the Council for information. Member States may request to discuss specific evaluations in the Committees referred to in Article 15. The results shall feed back into programme design and resource allocation.
3. The Commission shall associate to an appropriate extent all relevant stakeholders in the evaluation phase of the Union assistance provided under this Regulation.

TITLE IV

OTHER COMMON PROVISIONS

Article 13

Biennial report

1. The Commission shall examine the progress made in implementing the measures of financial assistance taken in external action and shall submit to the European Parliament and to the Council a report every two years starting in 2016 on the implementation and results and, as far as possible, on the main outcomes and impacts of the Union's financial assistance. This report shall also be submitted to the European Economic and Social Committee and to the Committee of the Regions.
2. The biennial report shall contain information relating to the previous year on the measures financed, the results of monitoring and evaluation exercises, the involvement of the relevant partners, and the implementation of budgetary commitments and of payments appropriations. It shall assess the results of the Union's financial assistance, using as far as possible, specific and measurable indicators of its role in meeting the objectives of the Instruments.

Article 14

Climate action and biodiversity expenditure

The funding allocated in the context of the Instruments shall be subject to an annual tracking system based on the OECD methodology ('Rio markers'), integrated into the existing methodology for performance management of EU programmes, to quantify the expenditure related to climate action and biodiversity at the level of the action programmes, individual and special measures referred to in Article 2(1), and recorded within evaluations and biennial reports. An annual estimate of the overall spending related to climate action and biodiversity shall be made on the basis of the adopted indicative programming documents.

FINAL PROVISIONS

Article 15

Committees

1. The Commission shall be assisted by the committees established by the Instruments.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the committee is to be obtained by written procedure, the procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so requests.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the committee is to be obtained by written procedure, the procedure shall be terminated without result when, within the time limit for delivery

of the opinion, the chair of the committee so decides or a simple majority of committee members so requests.

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

The adopted decision shall remain in force for the duration of the adopted or modified document, action programme or measure.

Article 16

Review and evaluation of the Instruments

1. No later than 31 December 2017, a report shall be established by the Commission on the achievement of the objectives of each of the Instruments by means of result and impact indicators measuring the efficiency of the use of resources and the European added value of the Instruments, in view of a decision on the renewal, modification or suspension of the types of actions implemented under the Instruments. The report shall, in addition, address the scope for simplification, internal and external coherence, the continued relevance of all objectives, as well as the contribution of the measures to the Union priorities for smart, sustainable and inclusive growth. It shall take into account any findings and conclusions on the long-term impact of the Instruments.
2. This report shall be submitted to the European Parliament and to the Council, and shall be accompanied if appropriate, by legislative proposals introducing the necessary modifications to the Instruments.
3. The values of the indicators on 1 January 2014 shall be used as a basis for assessing the extent to which the objectives have been achieved.
4. Partner countries shall be required by the Commission to provide all the data and information necessary, in line with the international commitments on aid effectiveness, to permit the monitoring and evaluation of the concerned measures.
5. The longer-term impacts and the sustainability of effects of the Instruments shall be evaluated in accordance with the rules and procedures applicable at that time.

Article 17

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

It shall apply from 1 January 2014.

Done at Brussels,

For the European Parliament
The President

For the Council
The President