



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 July 2012

12742/12

**Interinstitutional File:
2011/0412 (COD)**

**COHOM 185
DEVGEN 213
NIS 65
PESC 964
RELEX 705
FIN 570
ACP 141
CADREFIN 356
CODEC 1942**

NOTE

from: General Secretariat
to: Delegations

No. prev.doc.: 11033/12

Subject: Proposals for external financing instruments under Heading 4 of the Multiannual Financial Framework 2014-2020
– Partial General Approach
= Draft Proposal for a Regulation of the European Parliament and of the Council establishing a financing instrument for the promotion of democracy and human rights worldwide

Delegations will find at annex the text of the above-mentioned partial general approach which was adopted by the Council (Foreign Affairs) on 25 June 2012.

DRAFT

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a financing instrument for the promotion and support of 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 Article 209 and 212 thereof,

Having regard to the proposal from the Commission,

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

Having regard to the Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission ‘Human Rights and Democracy at the heart of EU external action – Towards a more effective approach’ of December 2011,

Having regard to the adoption of the EU Strategic Framework on Human Rights and Democracy and an Action Plan on Human Rights and Democracy by the Council on xx 2012, as well as the decision to appoint an EU Special Representative for Human Rights¹,

Acting in accordance with the ordinary legislative procedure,

¹ To be updated both regarding titles and dates

Whereas:

- (1) This Regulation constitutes one of the instruments providing direct support for the European Union's external policies. It will replace the Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide².
- (2) This Regulation establishes a financing instrument for the promotion and support of democracy and human rights worldwide allowing for assistance independent from the consent of third country governments and other public authorities.
- (3) Article 2 of the Treaty on European Union 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. These 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.
- (4) Article 21 of the Treaty on European Union provides that the external action of the European Union shall be guided by the same principles which have inspired its own creation: 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) This financing instrument contributes to achieving the objectives of the Union's external action, including those of the European Development Policy.
- (5bis) 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 are two basic pillars of the EU's development policy. A commitment to respect, promote and protect human rights and democratic principles is an essential element of the EU's contractual relations with third countries.

² OJ L 386, 29.12.2006, p. 1–11.

- (6) 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 International Bill of Human Rights, and other human rights instrument adopted within the framework of the United Nations, as well as relevant regional human rights instruments.
- (7) Gender equality and women's rights are fundamental human rights and essential for social justice and their promotion is a strong component of this Regulation.
- (8) Democracy and human rights are inextricably linked, as recalled in the Council Conclusions of 18 November 2009, on democracy support in the EU's external relations. The fundamental freedoms of expression and association are the preconditions for political pluralism and democratic processes, whereas democratic control and 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.
- (9) The task of building and sustaining a culture of human rights and making democracy work for the people, though especially urgent and difficult in emerging democracies, is essentially a continuous challenge, belonging first and foremost to the people of the country concerned but without diminishing the commitment of the international community. It also requires a range of institutions, including national democratic parliaments that should ensure participation, representation, responsiveness and accountability. Special attention should be paid to countries in transition as well as fragile or post-conflict situations. In the implementation of this Regulation, the transition experiences and lessons learned of the enlargement and neighborhood policies will be taken into account.
- (10) In order to address these 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 specific financing instrument that can continue to work in an independent manner.

- (11) Union assistance under this Regulation is designed to complement the various other tools for implementing of Union policies on democracy and human rights, which range from political dialogue and diplomatic demarches to various instruments for financial and technical cooperation, including both geographic and thematic programmes. It will also complement the more crisis-related actions under the Instrument for Stability.
- (12) Under this Regulation, the Union provides assistance to address global, regional, national and local human rights and democratisation issues in partnership with civil society understood to span all types of social action by individuals or groups that are independent from the state and active in the field of human rights and democracy support.
- (13) Furthermore, whilst democracy and human rights objectives must be increasingly mainstreamed in all external assistance financing instruments, Union assistance under this Regulation will have a specific complementary and additional role by virtue of its global nature, and its independence of action from the consent of third country governments and other public authorities. This will allow for cooperation with civil society on sensitive human rights and democracy issues, including migrants' enjoyment of human rights, rights of asylum seekers and internally displaced persons, providing the flexibility to respond to changing circumstances. It will also provide Union capacity to articulate and support specific objectives and measures at international level which are neither geographically linked nor crisis related and which may require a transnational approach or involve operations both within the Union and in a range of third countries. Moreover, it will provide the necessary framework for operations, such as support for independent European Union election observation missions requiring policy coherence, a unified management system and common operating standards. In these activities the Union shall be guided by its commitment to a rights-based approach to development.

- (14) The Union will pay particular attention to countries and urgency situations where human rights and fundamental freedoms are most at risk and where disrespect for these rights and freedoms is particularly pronounced and systematic. In such situations, the political priorities will be to promote respect for the relevant international laws, 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 conflict situations, the Union will promote the compliance of all warring parties with their legal obligations under international humanitarian law, in accordance with the relevant Union guidelines.
- (15) In such most difficult countries or situations and in order to address urgent protection needs of human rights defenders, the Union should be able to respond in a flexible and timely manner by means of ad hoc grants. This will particularly be the case when the choice of procedural modalities could impact directly on the effectiveness of the measures or could subject beneficiaries to serious intimidation, retaliation or other types of risks.
- (16) European Union Election Observation Missions contribute significantly and successfully to democratic processes in third countries. However, the promotion and support of democracy extends far beyond the electoral process alone. Expenditure for election observation missions should therefore not take up a disproportionate amount of the total funding available under this Regulation.
- (16bis) The Union and the Member States shall 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 shall also consult other donors and actors.

- (16ter) The Union shall inform and have regular exchanges of views with the European Parliament. The Union shall seek regular exchanges of information and consult civil society, at all levels, including in third countries.
- (17) The implementing powers relating to the programming and financing of the actions supported under this Regulation should be exercised in accordance with Regulation (EU) N° 182/2011 of the European Parliament and 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 powers. Taking into account the nature of those implementing acts, in particular their policy orientation nature or their financial implications, the examination procedure should in principle be used for their adoption, except for technical implementing measures of a small financial scale.
- (18) Common Rules and procedures for the implementation of the Union's instruments for external action are laid down in regulation (EU N° .../...of the European Parliament and of the Council of ...³, hereinafter referred as "the Common Implementing Regulation".
- (18bis) The European Economic and Social Committee and the Committee of the Regions were consulted on... They delivered their opinion on.... and on
- (19) The organisation and functioning of the European External Action Service are described in Council Decision 2010/427/EU.

HAVE ADOPTED THIS REGULATION:

³ OJ...

Article 1

Subject-matter and objectives

This Regulation establishes a European Instrument for Democracy and Human Rights under which the Union shall provide assistance to the development and consolidation of democracy and the rule of law and of respect for all human rights and fundamental freedoms.

Such assistance shall aim in particular at:

- a) enhancing the respect for, implementation and observance of human rights and fundamental freedoms, as proclaimed in the Universal Declaration of Human Rights and other international and regional human rights instruments, and strengthening their protection, promotion and monitoring, mainly through support to relevant civil society organisations, human rights defenders and victims of repression and abuse;
- b) supporting and consolidating democratic reforms in third countries, by enhancing participatory and representative democracy, strengthening the overall democratic cycle, in particular by reinforcing an active role for civil society within this cycle, and improving the reliability of electoral processes, in particular by means of election observation missions.

Article 2

Scope

1. Union assistance shall relate to the following fields:

(a) support to and enhancement of participatory and representative democracy, including parliamentary democracy, and the processes of democratisation, mainly through civil society organisations, inter alia in:

(i) promoting freedom of association and assembly, unhindered movement of persons, freedom of opinion and expression, including political, artistic and cultural expression, unimpeded access to information, free press and independent pluralistic media, both traditional and ICT based, internet freedom and measures to combat administrative obstacles to the exercise of these freedoms, including the fight against censorship;

(ii) strengthening the rule of law, promoting the independence of the judiciary, encouraging, supporting and evaluating legal and institutional reforms, and promoting access to justice; supporting National Human Rights Institutions;

(iii) promoting and strengthening the International Criminal Court, ad hoc international criminal tribunals and the processes of transitional justice and truth and reconciliation mechanisms;

(iv) supporting democratic transition and reforms to achieve effective and transparent democratic accountability and oversight, including that of the security and justice sectors, and encouraging measures against corruption;

- (v) promoting political pluralism and democratic political representation, and encouraging political participation by citizens, in particular marginalised groups, in democratic reform processes at local, regional and national level;
 - (vi) promoting the equal participation of men and women in social, economic and political life, and supporting gender equality the participation of women in decision making processes and political representation of women;
 - (vii) supporting measures to facilitate the peaceful reconciliation within societies, including support for confidence-building measures relating to human rights and democratisation;
- (b) promotion and protection of human rights and fundamental freedoms, as proclaimed in the Universal Declaration of Human Rights and other international and regional instruments concerning civil, political, economic, social and cultural rights, mainly through civil society organisations, relating to inter alia:
- (i) the abolition of the death penalty, the establishment of moratoria with a view to abolition and, where the death penalty still exists, the observance of international minimum standards;
 - (i bis) the prevention of torture, ill-treatment and other cruel, inhuman and degrading treatment or punishment, as well as enforced disappearances and the rehabilitation of victims of torture;
 - (ii) support for, protection of, and assistance to human rights defenders, including addressing their urgent protection needs, in accordance with Article 1 of 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;

(iii) the fight against racism and xenophobia and discrimination based on any ground, including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;

(iv) freedom of thought, conscience and religion or belief, including by measures to eliminate all forms of hatred, intolerance and discrimination based on religion or belief and by fostering tolerance and respect for religious and cultural diversity within and among societies;

(v) the rights of indigenous peoples as contained in the UN Declaration on the Rights of Indigenous Peoples and the rights of persons belonging to national or ethnic, religious and linguistic minorities;

(vi) the rights of women as proclaimed in the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, including measures to combat female genital mutilation, forced marriages, crimes of honour, trafficking, and any other form of violence against women and girls;

(vii) the rights of the child, as proclaimed in the Convention on the Rights of the Child and its Optional Protocols, including the fight against child labour, child trafficking and child prostitution, and the recruitment and use of child soldiers;

(viii) the rights of persons with disabilities as enshrined in the UN Convention on the Rights of Persons with Disabilities;

(ix) economic, social and cultural rights, including the right to an adequate standard of living, and core labour standards and corporate social responsibility, support for the implementation of the UN Guiding Principles on Business and Human Rights;

- (x) education, training and monitoring in the area of human rights and democracy, and in the area covered by point (vii);
 - (xi) support for local, regional, national or international civil society organisations involved in the protection, promotion or defence of human rights and in measures referred to in point (vii);
- (c) strengthening of the international framework for the protection of human rights, justice, the rule of law and democracy, and for the promotion of international humanitarian law, in particular by:
- (i) providing support for international and regional instruments concerning human rights, justice, the rule of law and democracy, including regional courts and commissions for the protection of human rights;
 - (ii) fostering cooperation of civil society with international and regional intergovernmental organisations, and supporting civil society activities aimed at promoting and monitoring the implementation of international and regional instruments concerning human rights, justice, the rule of law and democracy;
 - (iii) training in and dissemination of information on international humanitarian law and support to its enforcement;
- (d) building confidence in and enhancing the reliability and transparency of democratic electoral processes, while contributing to the efficiency and consistency of the whole electoral cycle, in particular,
- (i) through deployment of Union Election Observation Missions;
 - (ii) through other measures of monitoring electoral processes;

(iii) by contributing to the development of the electoral observation capacity of civil society organisations at regional and local levels, and supporting their initiatives to enhance participation in, and the follow-up to, the electoral process;

(iv) by supporting measures aimed at the consistent integration of electoral processes into the democratic cycle and at implementing recommendations made by Union Election Observation Missions in particular through civil society organisations;

2. The promotion and protection of gender equality, the rights of the child, rights of indigenous peoples, rights of persons with disabilities, the rights of persons belonging to minorities and the rights of lesbian, gay, bisexual, and transgender persons, as well as the principles of non-discrimination, participation, empowerment, as well as accountability, openness and transparency shall be taken into account whenever relevant for all assistance measures referred to in this Regulation.
3. The assistance measures shall be implemented in the territory of third countries or shall be directly related to situations arising in third countries, or shall be directly related to global or regional actions.
4. The assistance measures shall take into account the specific features of crisis or urgency situations and countries or situations where there is a serious lack of fundamental freedoms, where human security is most at risk or where human rights organisations and defenders operate under the most difficult conditions.

Article 2A

Coordination, Coherence and Complementarity of European Union's Assistance

1. European Union assistance under this Regulation shall be consistent with the overall framework of the European Union's external action, and complementary to that provided by other instruments or agreements for external assistance.
2. In order to enhance the effectiveness, coherence and consistency of the Union's external action, the Union and the Member States shall 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. Such consultations may lead to joint programming and joint activities between the Union and Member States. The Union shall also consult other donors and actors.
3. The Union shall inform and have regular exchanges of views with the European Parliament. The Union shall seek regular exchanges of information and consult civil society, at all levels, including in third countries.

Article 3

General Framework for programming and implementation

Union assistance under this Regulation shall be implemented through the following measures and in accordance with the Common Implementing Regulation:

Strategy Papers and revisions thereof as appropriate;

Annual Action Programmes, individual measures and support measures;

Special Measures.

Article 4

Strategy papers

1. Strategy papers shall set out the European Union's strategy for its assistance under this Regulation, based on the Union's priorities, the international situation and the activities of the main partners. They shall be consistent with the overall purpose, objectives, scope, and principles of this Regulation.
2. Strategy papers shall set out the priority areas selected for financing by the Union during the period of validity of this Regulation, the specific objectives, the expected results and the performance indicators. They shall also give the indicative financial allocation, both overall and per priority area; this may be given in the form of a range, where appropriate.
3. Strategy papers shall be approved in accordance with the procedure laid down in Article 15 (3) of the Common Implementing Regulation. When significant changes of circumstances and policy so require, strategy papers shall be updated in accordance with the same procedure.

Article 5

Committee

The Commission shall be assisted by a Democracy and Human Rights Committee, hereinafter referred to as "the Committee". That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Article 6

Financial reference amount

The financial envelope for the implementation of this Regulation for the period 2014-2020 shall be EUR [1 578 000 000]⁴. Annual appropriations shall be authorised by the budgetary authority within the limits of the Financial Framework 2014 – 2020.

Article 7

European External Action Service

The application of this Regulation shall be in accordance with Council Decision 2010/427 EU establishing the organisation and functioning of the European External Action Service.

Article 8

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*.

It shall apply from 1 January 2014 until 31 December 2020.

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President

⁴ All reference amounts will be entered after the conclusion of negotiations regarding the Multiannual Framework (2014-2020).