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Subject: Proposals for external financing instruments under Heading 4 of the Multiannual Financial Framework 2014-2020  
– Partial General Approach  
= Draft Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument

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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 European Neighbourhood Instrument**

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 (1) and 212 (2) thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) This Regulation constitutes one of the instruments providing direct support for the European Union's external policies. It will replace the Regulation of the European Parliament and of the Council No 1638/2006 of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument which expires on 31 December 2013.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (2) Article 8 of the Treaty on European Union provides for the development of a special relationship with neighbouring countries, with the aim of establishing an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.
- (3) The Union seeks to promote, develop and consolidate the values of liberty, democracy, respect for human rights and fundamental freedoms, and the principles of equality and the rule of law on which it is founded through dialogue and cooperation with third countries in the framework of the observance and development of international law.
- (4) Since it was launched, the European Neighbourhood Policy has significantly strengthened relations with partner countries and brought tangible benefits to both the Union and its partners.
- (5) Under the European Neighbourhood Policy, the Union offers Neighbourhood countries a privileged relationship, building upon a mutual commitment to and promotion of the values of democracy and human rights, the rule of law, good governance and the principles of market economy, and sustainable and inclusive development.
- (6) The ENI supports the implementation of political initiatives that have contributed to shape the European Neighbourhood Policy: the Eastern Partnership between the Union and its Eastern neighbours, the Partnership for Democracy and Shared Prosperity and the Union for the Mediterranean in the Southern Neighbourhood. These initiatives are meaningful political frameworks for deepening relations with and among partner countries, based on principles of shared ownership and responsibility.

- (7) A number of major developments have taken place since the European Neighbourhood Policy was launched and the European Neighbourhood and Partnership Instrument was set up. These include a deepening of the relationship with the partners, the launch of regional initiatives and democratic transition processes in the region. This triggered a new European Neighbourhood Policy vision set out in 2011 as a result of a comprehensive Strategic Review of the Policy. It outlines key objectives for Union cooperation with Neighbourhood countries and provides for greater support to partners committed to building democratic societies and undertaking reforms, in line with the ‘more for more’ and ‘mutual accountability’ principles.
- (8) The ENI supports also the implementation of regional cooperation e.g. in the framework of the Northern Dimension or the Black Sea Synergy, as well as the external aspects of macro-regional strategies.
- (9) This Regulation acknowledges the specific status of the Russian Federation as both a Union neighbour and a strategic partner in the region.
- (10) (...)
- (11) Support under both this Instrument and the European Regional Development Fund should be provided for the Cross-Border Cooperation programmes between partner countries and/or the Russian Federation on the one hand and Member States on the other hand along the external borders of the European Union to promote integrated and sustainable regional development between neighbouring border regions and harmonious territorial integration across the Union and with neighbouring countries. To secure efficient implementation of Cross-Border Cooperation it is important to harmonise procedures with the European Territorial Cooperation, where applicable.

- (12) Border regions that belong to countries of the European Economic Area (EEA) and the relevant regions in countries covered by the Instrument for Pre accession Assistance can also participate in Cross-Border Cooperation. Participation of the European Economic Area countries in the Cross-Border Cooperation programmes should continue to be based on their own resources.
- (13) It is expected that the EU Member States, Partner countries and the Russian Federation taking part in Cross Border Cooperation will provide national co-financing. This will strengthen country ownership, increase the financial resources at the disposal of the programmes and facilitate the participation of local actors.
- (14) It is important to foster and facilitate cooperation for the common benefit of the Union and its partners, notably through pooling of contributions from internal and external instruments of the Union budget, in particular for Cross-Border Cooperation, regional cooperation, infrastructure projects of Union interest that involve Neighbourhood countries and in other areas of cooperation.
- (15) Support to be provided to neighbouring developing countries within the framework established by the European Neighbourhood Policy should be coherent with the objectives and principles of the Union's external policies and in particular its development and the Union's Common Foreign and Security Policy. Coherence with the external dimensions of Union's internal policies and instruments should also be ensured.
- (16) The Joint EU – Africa Strategy is of relevance for relations with the Mediterranean neighbours from North Africa.

- (17) The Union and its Member States should improve the coherence and the complementarity of their respective policies on cooperation with neighbouring countries. To ensure that the Union's cooperation and that of the Member States complement and reinforce each other, it is appropriate to provide for joint programming which should be implemented whenever possible and relevant.
- (18) Union support under this Regulation should in principle be aligned to corresponding national, regional or local strategies and measures of partner countries and, in the case of multi-country and Cross-Border Cooperation programmes, where relevant, also to those of the Russian Federation.
- (19) In Neighbourhood countries where alignment to Union rules and standards is one of the key policy objectives, the Union is best placed to deliver this support. Certain specific support can only be provided at Union level. EU Member States' transition experience can also contribute to the success of reforms in neighbouring countries and to promoting universal values in the region.
- (20) Furthermore, since the objectives of this Regulation, namely to promote enhanced political cooperation and progressive economic integration between the European Union and neighbouring countries, cannot be sufficiently achieved by the Member States and can, by reason of the scale 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 of the Treaty on European Union. 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.

- (21) [Union external support has increasing financing needs but the economic and budgetary situation of the Union limits the resources available for such support. The Commission must therefore seek the most efficient use of available resources by using financial instruments with leverage effect. Such effect could be increased by enabling the use and re-use of funds invested and generated by financial instruments.]<sup>3</sup>
- (22) Fighting climate change is one of the great challenges which the Union faces and urgent international action is needed. In accordance with the intent stated in the Commission June 2011 MFF Communication of increasing the climate related proportion of the Union budget to at least 20%, this Regulation should contribute to that goal.
- (23) Gender equality, the rights of persons belonging to minorities and anti-discrimination are cross-cutting objectives in all actions undertaken under this Regulation.
- (24) The Union is committed to promote decent work as well as ratification and effective implementation of the internationally recognised labour standards and multilateral environment agreements, in relations with its partners worldwide.
- (25) 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. These measures should be carried out in accordance with the applicable agreements concluded with international organisations and third countries.

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<sup>3</sup> Due to the ongoing negotiations on the revision of the Financial Regulation, Recital 21 is excluded from the partial general approach.

- (26) For the purpose of harmonising the terminology with the European Territorial Cooperation, the implementation documents for the Cross-Border Cooperation programmes should be called joint operational programmes.
- (27) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission.
- (28) The implementing powers relating to Article 7(2), (3), and (4), to Article 9(1) and to Article 12(1) should be exercised in accordance with 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 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 measures of a small financial scale.
- (29) The organisation and functioning of the European External Action Service are described in Council Decision 2010/427/EU.
- (30) Given the objectives and scope of the assistance provided under this Regulation, the European Economic and Social Committee and the Committee of the Regions have been consulted before its adoption.

HAVE ADOPTED THIS REGULATION:

**Title I.**

**OBJECTIVES AND PRINCIPLES**

*Article 1*

**Overall objective and scope**

1. The Union aims to establish an area of shared prosperity and good neighbourliness involving the Union and the countries and territories listed in the Annex to this Regulation (hereinafter ‘the partner countries’) by developing a special relationship founded on cooperation, mutual accountability and shared commitment to universal values of democracy, rule of law and respect of human rights.
2. Union support under this Regulation shall be used for the benefit of partner countries and the regions involved in the Cross-Border Cooperation. It can also be used for the common benefit of the Union and partner countries.
3. Union funding may also be used for the purpose of enabling the Russian Federation to participate in Cross-Border Cooperation and in regional cooperation with EU participation and in relevant multi-country programmes, including in cooperation on education.
4. Union funding under this Regulation for the countries and territories listed in the Annex is limited to their respective territory as defined in accordance with international law.

## *Article 2*

### **Specific objectives of Union's support**

1. Support under this Regulation shall focus on promoting enhanced political cooperation and progressive economic integration between the Union and the partner countries and, in particular, the implementation of partnership and cooperation agreements, association agreements or other existing and future agreements, and jointly agreed action plans or equivalent documents.
  
2. Union support shall target in particular:
  - (a) promoting human rights and fundamental freedoms, the rule of law, principles of equality, establishing deep and sustainable democracy, promoting good governance and developing a thriving civil society including social partners;
  - (b) achieving progressive integration into the Union internal market and enhanced sector and cross-sectoral cooperation including through legislative approximation and regulatory convergence towards Union and other relevant international standards and improved market access including through deep and comprehensive free trade areas, related institution building and investments, notably in interconnections;
  - (c) creating conditions for well managed mobility of people and promotion of people-to-people contacts;
  - (d) smart, sustainable and inclusive development in all aspects; poverty reduction, including through private-sector development; promotion of capacity building in science, higher education, technology and innovation and of a Common Knowledge and Innovation Space; promotion of internal economic, social and territorial cohesion; rural development; environmental protection, climate action and disaster resilience;
  - (e) promoting confidence building and other measures contributing to security and the prevention and settlement of conflicts;
  - (f) enhancing sub-regional, regional and Neighbourhood wide collaboration as well as Cross-Border Cooperation.

3. The achievement of these priority objectives shall be measured using notably the relevant Union periodic reports on the implementation of the policy, and for paragraphs 2(a), (d) and (e), the relevant indicators established by international organisations and other relevant bodies; for paragraphs 2(b), (c) and (d) the extent of the uptake of the Union regulatory framework by the partner countries as relevant; for paragraphs 2(c) and (f), the number of relevant agreements and cooperation actions. The indicators will include, among others, adequately monitored democratic elections, cooperation on justice, freedom and security issues, level of corruption, trade flows, gender equality and indicators enabling measuring internal economic disparities, including employment levels.
4. Union support may also be used in other areas when this is consistent with the overall objectives of the European Neighbourhood Policy.

### *Article 3*

#### **Policy framework**

1. The partnership and cooperation agreements, the association agreements and other existing or future agreements that establish a relationship with partner countries, corresponding Communications and Council conclusions as well as relevant summit declarations or conclusions of ministerial meetings with the partner countries of the European Neighbourhood Policy including in the context of the Eastern Partnership and the Union for the Mediterranean, shall, while respecting the principle of ownership, constitute the overall policy framework for programming and implementing Union support under this Regulation.
2. Jointly agreed action plans or other equivalent documents such as the association agendas between the partner countries and the Union, including as relevant within the Eastern Partnership and the Southern dimension of the European Neighbourhood Policy, shall provide the key point of reference for setting the priorities for Union support and for the assessment of progress outlined in Art 2(3).

3. Where no agreements, as mentioned in paragraph 1, between the Union and partner countries exist, Union support may be provided when it proves useful to pursue Union policy objectives, and shall be programmed on the basis of such objectives taking into account the needs of the country concerned.

#### *Article 4*

### **Differentiation, partnership and co-financing**

1. Union support provided under Article 6(1) (a) of this Regulation to each partner country shall be differentiated in form and amounts and reflect partner country's:
  - needs, using indicators such as population and level of development;
  - commitment to and progress in implementing agreed political, economic and social reform objectives;
  - commitment to and progress in building deep and sustainable democracy;
  - partnership with the EU, including its level of ambition;
  - absorption capacity and the potential impact of EU support.

This support will be reflected in the multi-annual programming documents specified in Article 7.

2. Following the adoption of the programming documents specified in Article 7 and without prejudice to the other elements outlined in Article 4(1), including partners' needs, the share of available resources offered to partner countries will be adapted according to their progress in building deep and sustainable democracy and in implementing agreed reform objectives. Support may be reconsidered, also taking into account Article 15, in the event of serious or persistent regression in these areas. This incentive-driven approach will not apply to support to civil society, people-to-people contacts, including cooperation among local authorities, support for the improvement of human rights, or crisis-related support measures.

3. Implementation of the incentive-driven approach under this Regulation will be the subject of regular exchanges of views among the EEAS, the Commission and the Member States in the Committee referred to in Article 13 and in the Council.
4. Union support under this Regulation shall, in principle, be established in partnership with the beneficiaries. The partnership shall involve as appropriate, national, regional and local authorities, other stakeholders, civil society, social partners and other non-state actors in preparing, implementing and monitoring Union support.
5. Union support under this Regulation shall in principle be co-financed by the partner and other participating countries through public funds, contributions from the beneficiaries or other sources. The same principle shall be applicable to the cooperation with the Russian Federation with regard to programmes referred to in Article 6(1) (b) and (c). Co-financing requirements may be waived in duly justified cases and when this is necessary to support the development of civil society and non-state actors, without prejudice to compliance with the other conditions set out in the Financial Regulation.

#### *Article 5*

#### **Coherence and Donor Coordination**

1. In implementing this Regulation, coherence shall be ensured with all areas of the Union external action as well as other relevant Union policies. To this end, measures financed under this Regulation, including those managed by the European Investment Bank (EIB), shall be based on the cooperation policy documents described in Article 3(1) and (2) as well as on the Union's specific interests, policy priorities and strategies. Such measures shall respect the commitments under multilateral agreements and international conventions to which the Union and partner countries are parties.

2. The Commission, the European External Action Service, the Member States and the European Investment Bank (EIB) shall ensure coherence between support provided under this Regulation and other support provided by the Union, the Member States and the European Investment Bank.
3. The Union and the Member States shall coordinate their respective support programmes with the aim of increasing effectiveness and efficiency in the delivery of support and policy dialogue in line with the established principles for strengthening operational coordination in the field of external support, and for harmonising policies and procedures. Coordination shall involve regular consultations and frequent exchanges of relevant information during the different phases of the support cycle, in particular at field level, and may lead to joint programming, delegated cooperation and/or transfer arrangements.
4. The Union shall, in liaison with the Member States, take the necessary steps, including consultations at an early stage of the programming process, to ensure complementarity, proper coordination and cooperation with multilateral and regional organisations and entities, including European financial institutions, international financial institutions, United Nations agencies, funds and programmes, private and political foundations and non Union donors.

## **Title II.**

### **INDICATIVE PROGRAMMING AND ALLOCATION OF FUNDS**

#### *Article 6*

#### **Type of programmes**

1. Union support under this Regulation shall be programmed through:
  - (a) bilateral programmes covering support to one partner country;
  - (b) multi-country programmes which address challenges common to all or a number of partner countries, based on priorities of the Eastern Partnership and Southern Dimension of the European Neighbourhood Policy and taking into account the work carried out in the context of the Union for the Mediterranean, and regional and sub-regional cooperation, primarily between two or more partner countries. This cooperation may involve the Russian Federation in accordance with Article 1(3);
  - (c) Cross-Border Cooperation programmes addressing cooperation between one or more Member States on the one hand and one or more partner countries and/or the Russian Federation on the other hand taking place along their shared part of the external border of the Union.
  
2. Union support under this Regulation shall be implemented in accordance with the Common Implementing Regulation and for the programmes referred to in the Article 6 (1) (c) also in accordance with the ENI Cross-Border Cooperation Implementing Rules.<sup>4</sup>

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<sup>4</sup> Agreement on this paragraph is provisional and Member States reserve their right to come back to the text once the Commission has tabled its proposal for the ENI Cross-Border Cooperation Implementing Rules.

## *Article 7*

### **Programming and indicative allocation of funds for country and multi country indicative programmes**

1. Financial allocations for country programmes shall be determined on the basis of criteria set out in Article 4(1).
2. For countries where the documents referred to in Article 3(2) exist, a comprehensive multi-annual Single Support Framework shall be adopted in accordance with the examination procedure referred to in Article 15(3) of the Common Implementing Regulation. The Single Support Framework shall review the progress made in relation to the policy framework and shall list priorities for Union support, mainly selected from those included in the documents referred to in Article 3(2) and in partner countries' strategies or plans, and for which the Union's regular assessment has shown the need for support. It shall also set out their indicative level of funding. Financial allocations for each Single Support Framework will be given in the form of a range with a variance of not more than 20%. The duration of the Single Support Framework shall correspond to the duration of the relevant document referred to in Article 3(2).
3. For countries where the documents referred to in Article 3(2) do not exist, a comprehensive programming document including a strategy and multi-annual indicative programme shall be adopted in accordance with the examination procedure referred to in Article 15 (3) of the Common Implementing Regulation. It shall define a Union response strategy on the basis on an analysis of the situation of the country concerned, and of its relations with the Union, the partner country's strategies or plans, the priorities for Union support and the indicative level of funding broken down by priority. Accompanying financial allocations will be given in the form of a range with a variance of not more than 20%. The programming document shall have an appropriate multi-annual duration.

4. For multi-country programmes, a comprehensive programming document including a strategy and a multi-annual indicative programme shall be adopted in accordance with the examination procedure referred to in Article 15(3) of the Common Implementing Regulation. It shall define the priorities for Union support towards the region or the sub-region and the indicative level of funding broken down by priority. It shall have an appropriate multi-annual duration. Financial allocations for multi-country programmes shall be determined on the basis of transparent and objective criteria.
5. The Single Support Framework documents referred to in paragraph 2 of this Article shall be reviewed when necessary, including in the light of the relevant EU periodic reports and taking account of the work of the joint bodies established under the agreements with partner countries, and may be revised in accordance with the examination procedure referred to in Article 15(3) of the Common Implementing Regulation. The programming documents referred to in paragraphs 3 and 4 of this Article shall be reviewed at their mid-term or whenever necessary and may be revised in accordance with the same procedure.
6. To facilitate the implementation of the incentive-driven approach referred to in Article 4(2), in the range of 10% of the ENI budget will be allocated to multi-country umbrella programmes that will supplement the country financial allocations referred to in Articles 7(2) and 7(3). The relevant Commission decisions establishing these umbrella programmes will specify the countries that may receive allocations, with the actual allocations to be decided subsequently on the basis of progress towards deep and sustainable democracy and implementation of agreed reform objectives.
7. When it is necessary to implement more effectively measures for the common benefit of the Union and partner countries, in areas such as transnational cooperation and inter-connections, funding under this Regulation can be pooled together with funding covered by other relevant Union Regulations establishing financial instruments. In this case, the Commission shall decide which single set of rules shall apply to implementation.

8. Member States shall be involved in the programming process. Those Member States and other donors that have committed to jointly programme their support with the EU shall be particularly closely involved. The programming documents may also cover their contribution as appropriate.
9. Where Member States and other donors have committed to jointly programme their support, a joint multi-annual programming document may replace the Single Support Framework referred to in paragraph (2) and the programming documents referred to in paragraphs (3) and (4), on condition that it meets the requirements set out in these provisions.
10. In the event of crises or threats to democracy, the rule of law, human rights and fundamental freedoms, or of natural or man-made disasters, an ad hoc review of the programming documents may be conducted. Such emergency review shall ensure that coherence between Union policies, Union support provided under this Regulation and support provided under other Union financial instruments is maintained. An emergency review may lead to the adoption of revised programming documents. Where this is the case, the Commission shall send the revised programming documents to the European Parliament and to the Council for information no later than within one month of their adoption.

### **Title III.**

## **CROSS-BORDER COOPERATION**

### *Article 8*

#### **Geographical eligibility**

1. The Cross-Border Cooperation programmes referred to in Article 6(1)(c) can be established:
  - (a) for land borders, covering the territorial units corresponding to Nomenclature of territorial units for statistics (NUTS) level 3 or equivalent along the land borders between Member States and partner countries, and/or the Russian Federation without prejudice to potential adjustments and in line with the provisions of Article 9(4) needed to ensure the coherence and continuity of cooperation action;

- (b) for maritime borders, covering the territorial units corresponding to NUTS level 3 or equivalent along maritime borders between Member States and partner countries and/or the Russian Federation, separated by a maximum of 150 km, without prejudice to potential adjustments needed to ensure the coherence and continuity of cooperation action;
  - (c) around a sea basin, covering the coastal territorial units corresponding to NUTS level 2 or equivalent facing a sea basin common to Member States and partner countries and/or the Russian Federation.
2. In order to ensure the continuation of existing cooperation schemes and in other justified cases, territorial units adjoining to those referred to in paragraph 1 may be allowed to participate in Cross-Border Cooperation. The conditions under which adjoining regions may participate in cooperation will be laid down in the Joint Operational Programmes.
  3. In duly justified cases, major social, economic or cultural centres in the Member States, Partner countries or the Russian Federation that are not adjoining to eligible territorial units may be included on condition that such participation contributes to the objectives laid down in the programming document. The conditions under which such centres may participate in cooperation will be laid down in the Joint Operational Programmes.
  4. When programmes are established pursuant to paragraph 1(b), the European Commission may, in agreement with the participants, propose that the geographical eligibility be extended to the whole NUTS level 2 territorial unit in whose area the NUTS level 3 territorial unit is located.
  5. Cross-Border Cooperation shall aim to be coherent with the objectives of existing and future macro regional strategies.

## *Article 9*

### **Programming and allocation of funds for Cross-Border Cooperation**

1. A programming document shall be prepared for the purpose of defining the:
  - (a) strategic objectives to be pursued by Cross-Border Cooperation;
  - (b) list of the joint operational programmes to be established;
  - (c) indicative breakdown of resources between land and maritime border programmes referred to in Article 8 (1) (a) and (b) and sea basin programmes referred to in Article 8(1)(c);
  - (d) indicative multi-annual allocations to each joint operational programme;
  - (e) territorial units eligible to participate in each joint operational programme, and the regions and centres indicated in Article 8(2), 8(3) and 8(4);
  - (f) indicative allocation to support, as appropriate, horizontal capacity building actions, networking and exchange of experiences among programmes;
  - (g) contributions to the transnational programmes established under Regulation (EU) No (...) of the European Parliament and the Council of (...) on specific provisions for the support from the European Regional Development Fund to the European Territorial Cooperation goal, in which partner countries and/or the Russian Federation participate.

The programming document shall cover a period of seven years and shall be adopted by the Commission in accordance with the examination procedure referred to in Article 15(3) of the Common Implementing Regulation. It shall be reviewed at mid-term or whenever necessary and may be revised in accordance with the same procedure referred to in that Article.

2. The joint operational programmes shall be co-financed by the European Regional Development Fund. The overall amount of the contribution from the European Regional Development Fund shall be determined pursuant to Article 4(4) of Regulation (EU) No (...) of the European Parliament and the Council of (...) on specific provisions for the support from the European Regional Development Fund to the European Territorial Cooperation goal). The provisions of this Regulation shall apply to the use of this contribution.
3. The Instrument for Pre-Accession may co-finance joint operational programmes to which countries eligible under such Instrument participate. The provisions of this Regulation shall apply to the use of this co-financing.
4. The indicative allocations of funds to the joint operational programmes shall be based primarily on the population of the eligible territorial units as defined in Article 8 (1) (a), (b) and (c) When determining the indicative allocations, adjustments may be made to reflect the need for a balance between the contributions from the European Regional Development Fund and the contributions provided under the budget of this Instrument as well as other factors affecting the intensity of cooperation, such as the specific characteristics of border areas and their capacity to manage and absorb Union support.

#### *Article 10*

#### **Joint operational programmes**

1. Cross-Border Cooperation shall be implemented through multi-annual joint operational programmes covering cooperation for a border or a group of borders and comprising multi-annual measures that pursue a consistent set of priorities and that may be implemented with Union support. Joint operational programmes shall be based on the programming document referred to in Article 9. They shall include a summary description of the management and control systems covering the elements referred to in Articles 11(2) and 12 (2).

2. Joint operational programmes for land and maritime borders shall be established for each border at the appropriate territorial level and shall include eligible territorial units belonging to one or more Member States and one or more partner countries and/or the Russian Federation.
3. Joint operational programmes around sea basins shall be multilateral, established at the appropriate territorial level and include eligible territorial units facing a common sea basin belonging to several participating countries, including at least one Member State and one partner country and/or the Russian Federation. They may include bilateral activities supporting cooperation between one Member State and one partner country and/or the Russian Federation.
4. Within one year of approval of the programming document referred to in Article 9, and after the adoption of the Cross-Border Cooperation Implementing rules, the participating countries shall jointly submit proposals for joint operational programmes to the Commission. The Commission shall adopt each joint operational programme after assessing its consistency with this regulation, the programming document and the implementing rules. The Commission shall present the joint Cross-Border Cooperation programmes to the European Parliament and the Member States for information within one month of the adoption of the programmes.
5. Regions in countries other than partner countries, the Russian Federation or Member States, which are adjoining to eligible regions as defined in Article 8(1) (a) and (b) or face a common sea basin where a joint operational programme is being established may be covered by a joint operational programme and benefit from Union support under the conditions set out in the programming document referred to in Article 9.

6. The Commission and the participating countries shall take the appropriate measures to ensure that Cross-Border Cooperation programmes-established under this Regulation and transnational cooperation programmes established under the Regulation (EU) No (...) and that have a partially overlapping geographical coverage will be fully complementary and mutually re-enforcing.
7. Joint operational programmes may be revised at the initiative of the participating countries or the Commission for reasons such as:
  - changes in cooperation priorities, socio-economic developments,
  - results of implementing the measures concerned and those produced by the monitoring and evaluation process,
  - the need to adjust the amounts of available funds and reallocate resources.
8. By the end of the calendar year following the year of adoption of the joint operational programmes at the latest, the Commission shall conclude a financing agreement with the partner countries and/or the Russian Federation. The financing agreement shall include the legal provisions necessary to implement the joint operational programme and may be co-signed by the other participating countries and by the Managing Authority referred to in Article 12(2)(c) or by the country hosting the Managing Authority.

Where necessary, an agreement (e.g. in the form of a memorandum of understanding) shall be concluded between the participating countries and the Managing Authority to set out the countries' specific financial responsibilities and programme specific implementation modalities, tasks and responsibilities of its management and administration.

9. A joint operational programme involving more than one partner country or at least one partner country and the Russian Federation is established if at least one partner country or the Russian Federation signs the financing agreement. Other partner countries or the Russian Federation covered by an established programme can join the programme at any time by signing the financing agreement.

10. If a participating country undertakes to co-finance a programme, the joint operational programme shall clarify the arrangements and necessary safeguards for auditing, providing, using and monitoring the co-financing. The related financing agreement shall be signed by all participating countries and programme's Managing Authority or by the country hosting the Managing Authority.
11. Joint operational programmes may also provide for a financial contribution from and to instruments with which grants could be combined, subject to the rules of these instruments, provided that this contributes to achieving the programmes' priorities.
12. Following the principle of partnership, participating countries and their regions shall jointly select actions for Union support that are consistent with the priorities and measures of the joint operational programme.
13. In specific and duly justified cases, where:
  - (a) a joint operational programme cannot be submitted owing to problems arising in relations between participating countries or between the European Union and a partner country or the Russian Federation,  
or
  - (a) by 30 June 2017, at the latest, the participating countries have not yet submitted to the Commission a joint operational programme,  
or
  - (b) none of the non-EU participants to the programme have signed the relevant financing agreement by the end of the year following the adoption of the programme,

the Commission, following consultations with the Member State(s) concerned, shall take the necessary steps to allow the Member State(s) concerned to use the contribution from the European Regional Development Fund to the joint operational programme pursuant to Article 4(7) and (8) of Regulation (EU) No (...).

14. Budget commitments for CBC actions or programmes extending over more than one financial year may be broken down over several years into annual instalments.

### *Article 11*

#### **Management of joint operational programmes**

1. Joint operational programmes shall preferably be implemented in shared management with Member States. However, participating countries may propose implementation in indirect management, by an entity listed in the Financial Regulation and in accordance with the Implementing Rules referred to in Article 12(2).
2. The Commission shall satisfy itself on the basis of available information that the Member State in case of shared management, or the partner country or the Russian Federation or the international organisation in case of indirect management, have set up and operate management and control systems that comply with the Financial Regulation, this Regulation, and its implementing rules referred to in Article 12(2).

Member States, partner countries, the Russian Federation and international organisations concerned shall ensure the effective functioning of their management and control system, the legality and regularity of the underlying transactions and the respect of the principle of sound financial management. They shall be responsible for the management and control of the programmes.

The Commission may require the Member State or the partner country or the Russian Federation or the international organisation concerned to examine a complaint submitted to the Commission concerning the selection or implementation of operations supported under this Title or the functioning of the management and control system.

3. In order to allow the joint operational programmes to prepare adequately for implementation, expenditure incurred after the submission of the joint operational programmes to the Commission shall be eligible at the earliest from 1 January 2014.

4. Where eligibility is restricted in accordance with Article 8(7) of the Common Implementing Regulation, the entity referred to in paragraph 1, which may launch calls for proposals and tenders, is entitled in such case to accept as eligible tenderers, applicants and candidates from non eligible countries, or goods from non eligible origin, in accordance with Articles 8(2) and 9(3) of the Common Implementing Regulation and with the provisions of the ENI Cross-Border Cooperation Implementing Rules.<sup>5</sup>

#### *Article 12*

### **Implementing rules for Cross Border Cooperation**

1. Implementing rules laying down specific provisions for the implementation of this Title shall be adopted in accordance with the examination procedure referred to in Article 15(3) of the Common Implementing Regulation.<sup>6</sup>
2. Matters covered by the Implementing Rules shall include detailed provisions on:
- (a) the rate and methods of co-financing;
  - (b) the preparation, modification and closure of joint operational programmes;
  - (c) the role and function of the programme structures, e.g.: Joint Monitoring Committee, Managing Authority and its Joint Technical Secretariat, including their standing, effective identification, accountability and responsibility, description of Management and Control Systems, and conditions on the technical and financial management of Union support, including eligibility of expenditure;
  - (d) recovery procedures in particular in non EU countries; the monitoring and evaluation;
  - (e) the visibility and information activities;
  - (f) shared and indirect management as referred to in Article 6(2) of the Common Implementing Regulation.

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<sup>5</sup> Agreement on this paragraph is provisional and Member States reserve their right to come back to the text once the Commission has tabled its proposal for the ENI Cross-Border Cooperation Implementing Rules.

<sup>6</sup> Agreement on this paragraph is provisional and Member States reserve their right to come back to the text once the Commission has tabled its proposal for the ENI Cross-Border Cooperation Implementing Rules.

## TITLE IV

### FINAL PROVISIONS

#### *Article 13*

##### **Committee**

The Commission shall be assisted by the European Neighbourhood Instrument Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

#### *Article 14*

##### **Participation by a third country not covered by Article 1**

1. In duly justified circumstances and in order to ensure the coherence and effectiveness of Union financing or to foster regional or trans-regional cooperation, the Commission may decide, in accordance with the examination procedure referred to in Article 15(3) of the Common Implementing Regulation, to extend the eligibility of specific actions on a case by case basis to countries, territories and regions which otherwise would not be eligible for financing. Notwithstanding the provisions of Article 8(1) of the Common Implementing Regulation, natural and legal persons from countries, territories and regions concerned may participate in the procedures implementing such actions.
2. Provision may be made for this possibility in the programming documents referred to in Article 7.

### *Article 15*

#### **Suspension of Union support**

Without prejudice to the provision on the suspension of aid in agreements with partner countries and regions, where a partner fails to observe the principles of democracy, the rule of law and the respect for human rights and fundamental freedoms, the Council may take the appropriate measures in accordance with Article 215 (1) of the Treaty on the functioning of the European Union. In such cases, Union assistance shall, to the extent possible, primarily be used to support non-state actors for measures aimed at supporting populations directly and promoting human rights and fundamental freedoms and supporting the democratisation process in partner countries. Before adopting appropriate measures, the Union may conduct any consultations with the partner country or territory concerned.

### *Article 16*

#### **Financial reference amount**

1. The financial envelope available for implementing this Regulation over the period 2014 to 2020 shall be EUR [18 182 300 000] (current prices).<sup>7</sup> Up to 5% of the financial envelope shall be allocated to the Cross-Border Cooperation programmes referred to in Article 6(1) (c).
2. Annual appropriations shall be authorized by the budgetary authority within the limits of the financial framework.

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<sup>7</sup> All reference amounts will be entered after the conclusion of negotiations regarding the Multiannual Framework (2014-2020).

3. As referred to in Article 13, paragraph 2 of the "Erasmus for All" Regulation, in order to promote the international dimension of higher education, an indicative amount of [EUR 1 812 100 000]<sup>8</sup> from the different external instruments (Development Cooperation Instrument, European Neighbourhood Instrument, Instrument for Pre-accession Assistance, Partnership Instrument and the European Development Fund), will be allocated to actions of learning mobility to or from non EU countries and to cooperation and policy dialogue with authorities/institutions/organisations from these countries. The provisions of the "Erasmus for All" Regulation will apply to the use of those funds.

The funding will be made available through 2 multiannual allocations only covering the first 4 years and the remaining 3 years respectively. This funding will be reflected in the multiannual indicative programming of these instruments, in line with the identified needs and priorities of the countries concerned. The allocations can be revised in case of major unforeseen circumstances or important political changes in line with the EU external priorities.

#### *Article 17*

### **European External Action Service**

The application of this Regulation shall be in accordance with Council Decision (EU) No 2010/427/EU, establishing the organisation and functioning of the European External Action Service.

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<sup>8</sup> All reference amounts will be entered after the conclusion of negotiations regarding the Multiannual Framework (2014-2020).

*Article 18*

**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*

Partner countries referred to in Article 1:

Algeria

Armenia

Azerbaijan

Belarus

Egypt

Georgia

Israel

Jordan

Lebanon

Libya

The Republic of Moldova

Morocco

occupied Palestinian territory (oPt)

Syria

Tunisia

Ukraine