

**REGULATION (EU) No 1338/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 13 December 2011**

**amending Council Regulation (EC) No 1934/2006 establishing a financing instrument for
cooperation with industrialised and other high-income countries and territories**

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 207(2) and 209(1) thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure, in
the light of the joint text approved by the Conciliation
Committee on 31 October 2011 ⁽¹⁾,

Whereas:

- (1) Since 2007 the Community has streamlined its geographical cooperation with developing countries in Asia, Central Asia and Latin America, and with Iraq, Iran, Yemen, and South Africa under Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation ⁽²⁾.
- (2) The primary and overarching objective of Regulation (EC) No 1905/2006 is the eradication of poverty through the pursuit of the Millennium Development Goals. The scope of cooperation for the geographic programmes with developing countries, territories and regions established under that Regulation is furthermore limited materially to financing measures designed to fulfil the criteria for Official Development Assistance ('ODA criteria') established by the Development Assistance Committee of the Organisation for Economic Cooperation and Development ('OECD/DAC').
- (3) It is in the Union's interests to further deepen its relations with the developing countries concerned, which are important bilateral partners and players in multilateral forums and in global governance. The Union has a strategic interest in promoting diversified links with those countries, in particular in areas such

as economic, commercial, academic, business and scientific exchanges. It therefore needs a financial instrument that allows the financing of such measures which, in principle, do not qualify as ODA under the ODA criteria but which are crucially important in terms of consolidating relations and which make an important contribution to promoting the progress of the developing countries concerned.

- (4) For that purpose, four preparatory actions were set out in the 2007 and 2008 budget procedures to initiate such enhanced cooperation in accordance with point (b) of Article 49(6) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽³⁾. Those four preparatory actions are: business and scientific exchanges with India; business and scientific exchanges with China; cooperation with middle-income group countries in Asia; and cooperation with middle-income group countries in Latin America. Under that Article the legislative procedure further to preparatory actions must be concluded before the end of the third financial year.
- (5) The objectives and provisions of Council Regulation (EC) No 1934/2006 ⁽⁴⁾ are appropriate to pursue such enhanced cooperation with countries falling under Regulation (EC) No 1905/2006. For that purpose, it is necessary to extend the geographical scope of Regulation (EC) No 1934/2006 and to provide for a financial envelope to cover cooperation with those developing countries.
- (6) Extending the geographical scope of Regulation (EC) No 1934/2006 brings the developing countries concerned within the scope of two different external action financial instruments. Care should be taken to ensure that those two financial instruments are kept strictly separate from each other. Measures which fulfil the ODA criteria will be financed under Regulation (EC) No 1905/2006, whereas Regulation (EC) No 1934/2006 will apply exclusively to measures which, in principle, do not fulfil those criteria. It is also necessary to ensure that the countries previously falling within the scope of Regulation (EC) No 1934/2006 — industrialised and other high-income countries and territories — are not placed at a disadvantage, particularly in financial terms, by the extension of that Regulation's geographical scope.

⁽¹⁾ Position of the European Parliament of 21 October 2010 (not yet published in the Official Journal) and position of the Council at first reading of 10 December 2010 (OJ C 7 E, 12.1.2011, p. 1). Position of the European Parliament of 3 February 2011 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 1 December 2011 (not yet published in the Official Journal) and decision of the Council of 28 November 2011.

⁽²⁾ OJ L 378, 27.12.2006, p. 41.

⁽³⁾ OJ L 248, 16.9.2002, p. 1.

⁽⁴⁾ OJ L 405, 30.12.2006, p. 41.

- (7) Since the economic crisis has placed budgets under extreme strain throughout the Union and the proposed extension embraces countries which sometimes demonstrate a similar level of competitiveness to that of the Union and have attained an average standard of living which approaches that of some Member States, Union cooperation should take into consideration efforts made by the recipient countries to comply with the international agreements of the International Labour Organisation and to participate in the general objectives of greenhouse gas emissions reduction.
- (8) The review of the implementation of the external action financial instruments has identified inconsistencies in the provisions that exclude costs relating to taxes, duties or other charges as ineligible. For the sake of consistency, it is proposed to bring those provisions into line with the other instruments.
- (9) Regulation (EC) No 1934/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 1934/2006

Regulation (EC) No 1934/2006 is hereby amended as follows:

- (1) the title of the Regulation is replaced by the following:

‘Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories, and with developing countries falling under Regulation (EC) No 1905/2006 of the European Parliament and of the Council, for activities other than official development assistance’;

- (2) Articles 1 to 4 are replaced by the following:

‘Article 1

Objective

1. For the purpose of this Regulation, “industrialised and other high-income countries and territories” shall comprise countries and territories listed in Annex I to this Regulation and “developing countries” shall comprise countries falling under Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (*) and listed in Annex II to this Regulation. They are together hereinafter referred to as “partner countries”.

Union financing under this Regulation shall support economic, financial, technical, cultural and academic cooperation with partner countries in the areas set out in Article 4, falling within its spheres of competence. This Regulation shall serve to finance measures which, in principle, do not fulfil the criteria for Official Development Assistance (“ODA criteria”) established by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (“OECD/DAC”).

2. The primary objective of cooperation with partner countries shall be to provide a specific response to the need to strengthen links and to engage further with them on a bilateral, regional or multilateral basis in order to create a more favourable and transparent environment for the development of relations between the Union and partner countries in accordance with the principles guiding the Union’s external action as laid down in the Treaties. This refers amongst others to the promotion of democracy, respect for human rights and fundamental freedoms, the rule of law, as well as the promotion of decent work and good governance, and the preservation of the environment, in order to contribute to progress and sustainable development processes in partner countries.

Article 2

Scope

1. Cooperation shall be aimed at engaging with partner countries in order to enhance dialogue and rapprochement and to share and promote similar political, economic and institutional structures and values. The Union shall also aim at increasing cooperation and exchanges with established or increasingly important bilateral partners and players in multilateral forums and in global governance. The cooperation also covers partners with which the Union has a strategic interest in promoting links and its values as laid down in the Treaties.

2. In duly justified circumstances and in order to ensure the coherence and effectiveness of Union financing and to foster regional cooperation, the Commission may decide when adopting annual action programmes referred to in Article 6 that countries not listed in the Annexes are eligible for measures financed under this Regulation, where the project or programme to be implemented is of a regional or cross-border nature. Provisions shall be made for this in the multiannual cooperation programmes referred to in Article 5.

3. The Commission shall amend the lists in Annexes I and II following the regular OECD/DAC reviews of its list of developing countries, and shall inform the European Parliament and the Council thereof.

4. For Union financing under this Regulation, particular attention shall be paid where appropriate to the compliance of partner countries with the core labour standards of the International Labour Organisation (ILO) and to their efforts to pursue reductions of greenhouse gas emissions.

5. In relation to countries listed in Annex II to this Regulation, policy coherence with measures financed under Regulation (EC) No 1905/2006 and Regulation (EC) No 1337/2008 of the European Parliament and of the Council of 16 December 2008 establishing a facility for rapid response to soaring food prices in developing countries(**) shall be strictly observed.

Article 3

General principles

1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law and seeks to promote, develop and consolidate commitment to those principles in partner countries through dialogue and cooperation.

2. In the implementation of this Regulation a differentiated approach in designing cooperation with partner countries shall be pursued, where appropriate, to take account of their economic, social and political contexts as well as of the Union's specific interests, strategies and priorities.

3. Measures financed under this Regulation shall be consistent with and cover areas of cooperation set out notably in the instruments, agreements, declarations and action plans between the Union and partner countries, as well as areas pertaining to the Union's specific interests and priorities.

4. For measures financed under this Regulation, the Union shall aim to ensure coherence with other areas of its external action as well as with other relevant Union policies, in particular development cooperation. This shall be ensured by formulating policy, strategic planning and the programming and implementation of measures.

5. Measures financed under this Regulation shall complement and bring added value to the efforts undertaken by Member States and Union public bodies in the area of commercial relations and cultural, academic and scientific exchanges.

6. The Commission shall inform and have regular exchanges of views with the European Parliament.

Article 4

Areas of cooperation

Union financing shall support cooperation actions in accordance with Article 1 and shall be consistent with the overall purpose, scope, objectives and general principles of this Regulation. Union financing shall cover actions that, in principle, do not fulfil the ODA criteria, and which may include a regional dimension, in the following areas of cooperation:

- (1) the promotion of cooperation, partnerships and joint undertakings between economic, social, cultural, academic and scientific actors in the Union and partner countries;
- (2) the stimulation of bilateral trade, investment flows and economic partnerships, including a focus on small and medium-sized enterprises;
- (3) the promotion of dialogue between political, economic, social and cultural actors and other non-governmental organisations in relevant sectors in the Union and partner countries;
- (4) the promotion of people-to-people links, education and training programmes and intellectual exchanges and the enhancement of mutual understanding between cultures, particularly at the family level, including measures to ensure and increase Union participation in Erasmus Mundus and participation in European education fairs;
- (5) the promotion of cooperative projects in areas such as research, science and technology, sports and culture, energy (in particular renewable energy), transport, environmental matters (including climate change), customs, financial, legal and human rights issues, and any other matter of mutual interest between the Union and partner countries;
- (6) the enhancement of awareness about and understanding of the Union and of its visibility in partner countries;
- (7) support for specific initiatives, including research work, studies, pilot schemes or joint projects destined to respond in an effective and flexible manner to cooperation objectives arising from developments in the Union's bilateral relationships with partner countries or aiming to provide impetus to the further deepening and broadening of bilateral relationships with them.

(*) OJ L 378, 27.12.2006, p. 41.

(**) OJ L 354, 31.12.2008, p. 62.;

(3) in Article 5, paragraph 2 is replaced by the following:

‘2. Multiannual cooperation programmes shall cover no more than the period of validity of this Regulation. They shall set out the Union’s specific interests and priorities, the general objectives and the expected results. In particular with regard to Erasmus Mundus, programmes shall aim for the most balanced geographical coverage possible. They shall also set out the areas selected for financing by the Union and outline the indicative financial allocation of funds, overall, per priority area and per partner country or group of partner countries for the period concerned. Where appropriate, this may be given in the form of a range. Multiannual cooperation programmes shall be reviewed at mid-term, or ad hoc if necessary.’;

(4) the following Article is added:

‘Article 5a

The Union’s strategic interests, general objectives, priority areas for financing and expected results for cooperation with partner countries listed in Annex II

The multiannual cooperation programmes referred to in Article 5 with partner countries listed in Annex II shall be based on the following general objectives, priority areas for financing and expected results:

(1) Public diplomacy and outreach, having as objectives:

- to promote widespread understanding and visibility of the Union,
- to promote the Union’s views on important policy issues and the Union’s values of democracy, respect for human rights and fundamental freedoms,
- to encourage reflection and discussion on the Union and its policies, and on Union relations with partner countries listed in Annex II,
- to develop new approaches that give momentum to positive, result-oriented relations with countries which have little or no knowledge of the Union.

Activities in support of those objectives should lead to a better perception and enhanced mutual understanding of the Union and of partner countries listed in Annex II, with a consequent beneficial effect on the economic and political relationships of the Union with its partners.

(2) Economic partnership and business cooperation, having as objective:

- to facilitate market access for Union companies, notably through programmes supporting them (including relevant regulatory support in relation to trade barriers), drawing on experience from long-standing business cooperation programmes.

Those programmes should, whenever applicable, be complementary to existing support measures. Those programmes should deliver concrete opportunities for improved business and scientific cooperation, increased turnover and investments in target areas and greater trade flows with partner countries listed in Annex II.

Those efforts shall be consistent with, and complementary to, the Commission’s broader strategy to develop Union competitiveness in global markets, and other Union policies towards specific regions and countries.

Resources shall be focused on countries where interventions can increase the participation of Union companies. Small and medium-sized Union enterprises, seeking access to the Asian, Latin American, Middle Eastern and South African markets shall be an important focus. Where appropriate, resources shall be focused on countries complying with the core labour standards of the ILO and which contribute to the global efforts to pursue reductions of greenhouse gas emissions.

(3) People-to-people links, having as objectives:

- to support high quality partnerships between higher education institutions in the Union and in third-countries as a basis for structured cooperation, exchange and mobility, at all levels of higher education (Action 2 — Strand 2: Partnerships with countries and territories covered by the Industrialised Countries Instrument), under Erasmus Mundus II. Action 2,
- to supplement Erasmus Mundus Action 2 scholarships, funded from the Development Cooperation Instrument (Action 2 — Strand 1: Partnerships with countries covered by the European Neighbourhood and Partnership Instrument, the Development Cooperation Instrument, the European Development Fund and the Instrument for Pre-Accession Assistance (former External Cooperation Window)), by supporting the mobility of Union students and professors to third countries,

- to promote together with civil society in its widest sense a better understanding of the Union as such, its positions on global issues and of economic, social and political integration processes, thus complementing the Union's formal relationships with governments,
- to promote cooperation, partnerships and joint undertakings between economic, social, cultural, academic and scientific actors in the Union and partner countries.

Those activities should help produce mutual benefits from education, culture and civil society cooperation. This shall be done through improvements in the quality of education offered and from confronting the mutual challenges of developing knowledge-based societies. The activities undertaken should add value to the cross-fertilisation of ideas, knowledge, research and technology results through academic and professional exchanges, particularly with partner countries that have higher education systems comparable to those of the Union.;

(5) in Article 6, paragraph 1 is replaced by the following:

'1. The Commission shall adopt annual action programmes based on the multiannual cooperation programmes referred to in Article 5 and shall transmit them simultaneously to the European Parliament and to the Council.;

(6) Article 7 is amended as follows:

- (a) the first paragraph becomes paragraph 1;
- (b) points (e) and (f) of paragraph 1 are replaced by the following:
 - '(e) joint bodies set up by partner countries and regions and the Union;
 - (f) Union institutions and bodies, in so far as they implement support measures specified in Article 9.;
- (c) the following paragraphs are added:

'2. Measures covered by Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid (*), Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability (**) or Regulation (EC) No 1905/2006, and eligible for funding thereunder shall not be funded under this Regulation.

3. Union financing under this Regulation shall not be used to finance the procurement of arms or

ammunition, nor operations having military or defence implications.

(*) OJ L 163, 2.7.1996, p. 1.

(**) OJ L 327, 24.11.2006, p. 1.;

(7) in Article 8, paragraph 3 is replaced by the following:

'3. Union financing shall, in principle, not be used for paying taxes, duties or charges in the partner countries.;

(8) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Union financing may cover expenditure associated with the preparation, follow up, monitoring, audit and evaluation activities directly necessary for the implementation of this Regulation and the achievement of its objectives, and any other administrative or technical assistance expenditure that the Commission, including its Delegations in partner countries, may incur for the management of operations financed under this Regulation.;

(b) paragraph 3 is replaced by the following:

'3. The Commission shall adopt support measures not covered by the multiannual cooperation programmes and shall transmit them simultaneously to the European Parliament and to the Council.;

(9) Article 12 is amended as follows:

(a) the title is replaced by the following:

'Protecting the Union's financial interests';

(b) paragraphs 1 and 2 are replaced by the following:

'1. Any agreements resulting from this Regulation shall contain provisions ensuring the protection of the Union's financial interests, in particular with respect to irregularities, fraud, corruption and any other illegal activity, in accordance with Council Regulations (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (*) and (Euratom, EC) No 2185/96 of 11 November 1996 concerning on the spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (**) and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (***).

2. Agreements shall expressly entitle the Commission and the Court of Auditors to perform audits, including document audits or on-the-spot audits of any contractor or subcontractor who has received Union funds. They shall also expressly authorise the Commission to carry out on-the-spot checks and inspections in accordance with Regulation (Euratom, EC) No 2185/96.

(*) OJ L 312, 23.12.1995, p. 1.

(**) OJ L 292, 15.11.1996, p. 2.

(***) OJ L 136, 31.5.1999, p. 1.;

(10) Articles 13 and 14 are replaced by the following:

'Article 13

Evaluation

1. The Commission shall regularly evaluate the actions and programmes financed under this Regulation, where appropriate or at the request of the European Parliament or the Council, by means of independent external evaluation reports, in order to ascertain whether the objectives have been met and to enable it to formulate recommendations with a view to improving future operations. The results shall feed back into programme design and resource allocation.

2. The Commission shall send the evaluation reports referred to in paragraph 1 to the European Parliament and to the Council for information.

3. The Commission shall associate relevant stakeholders, including non-State actors, in the evaluation phase of the Union cooperation provided for under this Regulation.

Article 14

Annual report

The Commission shall examine the progress made on implementing the measures taken under this Regulation and shall submit to the European Parliament and the Council a detailed annual report on the implementation of this Regulation. The report shall set out the results of the implementation of the budget and present all the actions and programmes financed, and as far as possible, set out the main outcomes and impacts of the cooperation actions and programmes.;

(11) Article 16 is replaced by the following:

'Article 16

Financial provisions

The financial reference amount for the implementation of this Regulation for the period from 2007 to 2013 shall be EUR 172 million for countries listed in Annex I and EUR 176 million for countries listed in Annex II. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.;

(12) in the Annex, the title is replaced by the following:

'ANNEX I

List of industrialised and other high-income countries and territories covered by this Regulation;

(13) new Annexes II and III, the text of which is set out in the Annex to this Regulation, are added.

Article 2

Entry into force

This Regulation shall enter into force on the day following 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.

Done at Strasbourg, 13 December 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

M. SZPUNAR

ANNEX

‘ANNEX II

List of developing countries covered by this Regulation*Latin America*

1. Argentina
2. Bolivia
3. Brazil
4. Chile
5. Colombia
6. Costa Rica
7. Cuba
8. Ecuador
9. El Salvador
10. Guatemala
11. Honduras
12. Mexico
13. Nicaragua
14. Panama
15. Paraguay
16. Peru
17. Uruguay
18. Venezuela

Asia

19. Afghanistan
20. Bangladesh
21. Bhutan
22. Burma/Myanmar
23. Cambodia
24. China
25. India
26. Indonesia
27. Democratic People's Republic of Korea
28. Laos
29. Malaysia
30. Maldives
31. Mongolia
32. Nepal

33. Pakistan

34. Philippines

35. Sri Lanka

36. Thailand

37. Vietnam

Central Asia

38. Kazakhstan

39. Kyrgyz Republic

40. Tajikistan

41. Turkmenistan

42. Uzbekistan

Middle East

43. Iran

44. Iraq

45. Yemen

South Africa

46. South Africa

ANNEX III

Financial allocation of funds for cooperation with countries listed in Annex II

The distribution of funds by priority areas for cooperation with the partner countries listed in Annex II shall be the following for the period 2011-2013:

Priority area	
Public diplomacy and outreach	At least 5 %
Promotion of economic partnership and business cooperation	At least 50 %
People-to-people links	At least 20 %
Unallocated reserve and administrative costs	Maximum 10 %

COMMISSION STATEMENT CONCERNING ARTICLE 16

The Regulation addresses the issue of support for a number of specific non-Official Development Assistance (ODA) activities in countries covered by the Development Cooperation Instrument (DCI Regulation No 1905/2006). The Regulation is intended to be a one-off solution to this issue.

The Commission reaffirms that the eradication of poverty, including the pursuit of the Millennium Development Goals, is the primary objective of its development cooperation and remains a priority.

It recalls that the financial reference amount fixed in Article 16 for countries listed in Annex II will be implemented using dedicated budget lines which are intended for activities other than Official Development Assistance.

Furthermore, the Commission confirms its intention to respect the financial reference amount fixed in Article 38 of the Development Cooperation Instrument (Regulation No 1905/2006) for the period 2007-2013 as well as the provisions in the same Regulation regarding the fulfilment of the criteria for ODA. It recalls that on the basis of its current financial planning, this reference amount will be exceeded in 2013.

In this context, the Commission intends to propose draft budgets which ensure a progression in development assistance for Asia and Latin America under the DCI Regulation No 1905/2006 over the period until 2013 so that the currently projected ODA amounts under the DCI and the EU budget generally are not affected.

STATEMENT BY THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE USE OF DELEGATED ACTS IN THE FUTURE MULTIANNUL FINANCIAL FRAMEWORK (MFF) 2014-2020

The European Parliament and the Council take note of the Commission Communication 'A Budget for Europe 2020' (COM(2011) 500 ⁽¹⁾), in particular in relation to the proposed use of delegated acts in the future external financing instruments and await legislative proposals, which will be duly considered.

⁽¹⁾ The Commission in its Communication: A budget for Europe 2020 (COM(2011) 500), states that:

'Furthermore, the future legal bases for the different instruments will propose the extensive use of delegated acts to allow for more flexibility in the management of the policies during the financing period, while respecting the prerogatives of the two branches of legislator.'

and

'It is considered that democratic scrutiny of external aid must be improved. This could be achieved by the use of delegated acts in accordance with Article 290 of the Treaty for certain aspects of programmes, not only placing the co-legislators on an equal footing but also ensuring more flexibility in programming. For the EDF, it is proposed to bring scrutiny into line with the DCI, whilst taking into account the specificities of this instrument.'