



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a Regulation of the European
Parliament and of the Council establishing a financing instrument
for development cooperation**

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2004)629 final -2004/0220(COD), as amended COM(2004)629 final/2):	1 October 2004
Date of the opinion of the European Parliament, first reading:	18 May 2006
Date of transmission of the amended proposal:	24 May 2006
Date of adoption of the common position:	16 October 2006

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The initial Commission proposal for a Development Cooperation and Economic Cooperation Instrument (DCECI), which embraced geographic and thematic aspects of cooperation with developing countries, including ACP countries, and industrialised countries, was not acceptable to Parliament, which adopted a large number of amendments at first reading in May 2006. After the vote at first reading, intensive discussions between the three institutions took place in order to find a solution as early as possible.

An exchange of letters between President Barroso and President Borrell in June 2006 paved the way for an overall agreement on the package of external instruments: first reading agreement on the European Neighbourhood and Partnership Instrument (ENPI), the Instrument for Stability (IfS) and an agreement on the Instrument for Pre-Accession Assistance (IPA) on the condition of a separate Human Rights Instrument and a new architecture involving a maximum of three instruments out of the DCECI (Industrialised Countries Instrument (ICI), a geographic Development Cooperation Instrument (DCI) and possibly a thematic DCI). President Barroso's letter made it clear that the Commission could accept splitting the DCECI, provided that a broad definition of development cooperation was ensured.

The Presidency proposed that the Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation (DCI) should cover both geographic cooperation with developing countries as well as thematic programmes and should be based on a single legal basis (Art. 179 TEC). Unlike the initial proposal, the DCI would contain an indicative financial breakdown as well as increased policy content regarding geographic and thematic programmes to address Parliament's main concern that its powers as co-legislator should be fully respected. The Commission could agree to the changes related to the structure of the DCI in order to achieve a global compromise on the overall architecture of the external action instruments.

After further intensive tripartite discussions between the Parliament's DEVE committee negotiating team, the Presidency and the Commission in August and September 2006, an agreement was reached on a negotiated common position. In particular, a compromise was reached on the outstanding issues, which have previously been defined by Parliament as 'breaking points' and relate to eligibility of assistance as Official Development Assistance (ODA), sectoral spending targets, the structure of the thematic programmes and the dialogue with the Parliament on the draft programming documents (see below under point 3.3).

This negotiated common position, which was adopted by the Council on 16 October 2006, was approved by Parliament's DEVE committee on 3 October where it confirmed that it would support the adoption of the negotiated common position by Parliament in an early second reading without further amendments.

This approach will allow for the entry into force of the DCI in January 2007, thereby avoiding any gap in the legal framework for the delivery of assistance.

3. COMMENTS ON THE COMMON POSITION

3.1. General comments on the common position

The Commission supports the negotiated common position which is the outcome of intensive negotiations between the three institutions. It is in line with the essential objectives and the underlying approach of the Commission's initial proposal. The chair of the DEVE committee has already confirmed in a letter that she would recommend to the members of the DEVE committee and to the Plenary that the updated common position be approved before the end of 2006 without amendments in Parliament's second reading.

3.2. Main characteristics of the negotiated common position

The negotiated common position reflects the following key elements:

- **A separate instrument for democracy and human rights:** The thematic programme on human rights and democracy is no longer included in the DCI. A new Commission proposal for a Regulation on establishing a financing instrument for the promotion of democracy and human rights was adopted by the Commission on 26 June 2006 (COM(2006)354).

- **A separate instrument for cooperation with industrialised countries:** The Presidency proposal for a Regulation on cooperation with industrialised countries was presented in the Council COASI working group for the first time on 19 July 2006 and has been forwarded to Parliament for its opinion.
- **A single legal basis, Article 179:** Even though the Commission considers that a double legal basis, Article 179 and Article 181A, would guarantee legal certainty, it can accept a DCI based on the single legal basis Article 179 TEC, as a broad definition of development cooperation and the wide scope of possible action under geographic and thematic programmes are ensured in the common position and will be maintained in the final Regulation. This is also in accordance with the so-called “centre of gravity” principle developed by the case-law of the Court of Justice.
- **Recitals:** A number of recitals have been added to provide further explanations in relation to the content of the DCI.
- **Increased focus on development of objectives and principles:** **Article 2** sets out the general objectives of development cooperation in line with Title XX of the Treaty establishing the European Community and the European Consensus on Development. **Article 3** concerns the general principles on which the Community is founded as well as the mainstreaming of cross-cutting issues and policy coherence and reflects the most recent commitments on aid effectiveness, such as donor coordination. Paragraphs 9 and 10 of Article 3 state that the Commission shall inform and have regular exchanges of views with the Parliament and that it shall seek regular exchanges of information with civil society. The two articles present the general framework for geographic cooperation and for thematic programmes.
- **Articles 5- 10, geographic cooperation:** These articles have been included to add policy content to geographic cooperation in response to Parliament’s request for policy setting regulations. In particular, the **horizontal Article 5** applies to all geographic articles and outlines actions in areas of cooperation which correspond to the areas for Community action in the European Consensus on Development. The other articles on geographic cooperation focus on the specific situation in the geographical region/country. The different regions/countries are: Latin America (Article 6), Asia (Article 7), Central Asia (Article 8), Middle East (Article 9) and South Africa (Article 10). Each article on specific cooperation has a cross reference to the horizontal Article 5, making it clear that the actions mentioned in Article 5 apply to all regions while others mentioned under Articles 6 to 10 are additional.
- **Articles 11-16, thematic programmes:** These articles have been incorporated to add policy content in response to Parliament’s request for better defined policy priorities in the form of policy setting regulations. The **horizontal Article 11** defines the relationship between thematic programmes and geographic cooperation and describes the area of actions in which thematic programmes add value to the geographic cooperation. The thematic programmes have been prepared on the basis of the corresponding communications from the Commission to the Council and the European Parliament and are designed to respond to future challenges. They are based on the existing thematic regulations, but go beyond them in order to address new priorities which have evolved over the last few years, and which have been set out in the ‘European Consensus on Development’. The different thematic programmes are: Article 12, Investing in people;

Article 13, environment and sustainable management of natural resources, including energy; Article 14, non-state actors and local authorities; Article 15, food security and Article 16, migration and asylum.

- **Article 17, Sugar Protocol ACP countries:** This article reflects the existing Regulation 266/2006 establishing accompanying measures for Sugar Protocol countries affected by the reform of the EU sugar regime. It is accompanied by a Commission declaration which stresses the transitional character of the accompanying measures, which are due to expire in 2013 (see declaration on Article 17 in Annex).
- **Articles 18-33:** These articles include detailed provisions with regard to programming and the allocation of funds.
- **Articles 33 and 34, reporting and evaluation:** Evaluation and reporting will have an increased focus on social sectors and on progress made towards achieving the MDGs. The implementation of geographic and thematic programmes will be evaluated where appropriate by means of independent external evaluations. As regards the latter, it is stated in Article 33 that proposals by the Parliament or the Council for independent external evaluations will be taken into due account.
- **Expiry and review clauses:** Article 40 contains a review clause, including for the financial breakdown, and Article 41 includes an expiry clause.
- **Financial reference amount:** Article 38 in combination with Annex 4 of the Council's common position provides an indicative financial breakdown. Account has been taken of the European Council decision of 16 December 2005 to maintain an intergovernmental European Development Fund (EDF), which will finance geographical cooperation with the African, Caribbean and Pacific countries (ACP), except South Africa. The relevant articles have been modified accordingly through the amended proposal of 24.5.2006 (COM(2004)629 final/2). Consequently, the financial reference amount for the DCI, over the period 2007-2013, is 16 897 Euro million as indicated in the common position. This corresponds to the amount for the earlier DCECI (17 053 million Euro) from which the reference amounts for the new Human Rights Instrument (449 million Euro) and for the new Instrument on Cooperation with Industrialised Countries (172 million Euro) have been deducted and the indicative amount of 465 million Euro, which in the initial proposal was included in ENPI, has now been added in the total for thematic programmes, to finance activities that benefit ENPI countries. The indicative amounts allocated to each geographical region and to each thematic programme are laid down in Annex 4, which forms an integral part of the Regulation (see also Commission declaration on Article 38).

3.3. Specific issues:

The following issues were the subject of protracted negotiations which resulted in finely balanced compromises between the three institutions:

- **Structure and scope of the thematic programmes:** While preserving the integrated approach of the thematic programmes (TP) 'Investing in people' and 'Non-state actors and local authorities', the TP 'Investing in people' was reshuffled in line with subheadings proposed by the Parliament ("good health for all"; "education, knowledge and skills"; "gender equality"; and "other aspects of human and social development"). A percentage was introduced in the TP 'Non-state actors and local authorities', according to which "*at*

least 85% of the funding foreseen under this thematic programme will be allocated to non-state actors.” It was agreed not to include percentages in the TP ‘Investing in people’, since the Commission introduced a benchmark on health and education in its declaration concerning Article 5 (see below under ‘spending targets/ benchmarking’).

- **Spending targets/ benchmarking:** Throughout the negotiations on the DCI, the Council and Commission made clear that spending targets were not acceptable for them (against the principle of ownership and donor coordination). The Parliament’s Development Committee favours spending targets to encourage increased allocations to social sectors with a particular focus on basic health and education. It was agreed that Parliament would no longer insist on spending targets in the legal text if the Commission proposed in a declaration an enlarged benchmark of 20% for basic and secondary education and basic health in relation to country programmes covered by the DCI as a whole. The existing 35% benchmark on social infrastructure and services would be dropped. In the declaration, the Commission also prioritises basic health and education, and social cohesion as a whole in its programming and implementation role for country programmes. It will also include an MDG profile in the programming document, and will encourage partner countries to prioritise social sectors in their development strategies. Finally, the Commission will ensure increased monitoring, evaluation and reporting on these objectives, with particular attention to social sectors and MDGs (see declaration on Article 5 in Annex).
- **ODA-eligibility and non-developing ENPI countries:** It was agreed that Article 2 (4), should specify the percentage of the thematic programmes which would be reported as Official Development Assistance (ODA), namely 90%. The non-developing ENPI countries (Russia and Israel) will be excluded ex officio, i.e. financial assistance to these countries will not count against the 10% which is not ODA. The margin of 10% gives the Commission the necessary flexibility to implement the TPs on migration and environment, which provide for actions that are not reportable as ODA. Consequently, the current text strikes a fine balance between full ODA eligibility and the necessary margin of flexibility. The Commission, in a declaration attached to the Regulation, will confirm its commitment that all the geographic measures and the overwhelming majority of thematic actions financed under the DCI will be eligible for ODA and that it does not intend to derogate from this practice (see declaration on Article 2 (4) in Annex).
- **Dialogue with Parliament on draft programming documents:** A number of amendments related to Parliament’s participation in the programming process, which were not compatible with the Comitology decision (Council Decision 1999/468 of 28 June 1999, as amended by Council Decision 2006/512 of 17 July 2006), which sets out the general framework for the exercise of implementing powers conferred on the Commission. It was agreed that a joint letter from Commissioners Michel and Ferrero-Waldner would be sent to Mr Mitchell and Mrs Morgantini, in which the Commission confirms its commitment to enter into a regular dialogue with Parliament as laid down in the declarations on democratic scrutiny attached to the Interinstitutional Agreement. In addition, a new paragraph 9 has been included in Article 3, according to which the Commission shall inform and have regular exchanges of views with the Parliament.

4. CONCLUSION

As explained above, the negotiated common position reflects to a very large extent Parliament's requests and amendments at first reading as well as the understanding achieved between the institutions in their intensive discussions.

The Commission can therefore support the negotiated common position.

5. STATEMENTS BY THE COMMISSION

The following declarations entered in the minutes of the Council formally adopting the common position of the Council (see Annex).

ANNEX

Commission Declaration on ODA-eligibility Art. 2 (4):

L'éligibilité à l'aide publique au développement telle que définie par le Comité d'aide au développement à l'OCDE continuera à être la règle générale pour les mesures de la Communauté finançant les programmes géographiques avec les pays en développement et les programmes thématiques. Pour les programmes géographiques, la Commission s'engage à respecter l'obligation de moyens figurant dans le premier alinéa de l'article 2 (4) du projet de règlement. Pour les programmes thématiques, l'immense majorité des mesures a été par le passé éligible à l'aide publique au développement, et la Commission confirme son engagement à poursuivre cette tendance.

Commission Declaration concerning Article 5 DCI:

The Commission reaffirms that the eradication of poverty and the pursuit of the Millennium Development Goals are at the core of the primary objective of its development assistance.

It recalls that it reached an understanding in 2002 with the European Parliament on a benchmark of 35% of assistance to developing countries to be allocated to social infrastructure and services, recognising that the EU contribution must be seen as part of the overall donor support to the social sectors and that a degree of flexibility must be the norm.

Since then, as a result of translation of development policy into country programmes and subsequently into commitments, support for social infrastructure has risen to more than 35%, and the European Parliament has been fully informed of progress. Though this specific benchmark has been overtaken, the Commission will continue to report annually on these figures.

Pursuant to the request of the European Parliament, the Commission now commits to the following objectives, while stressing that they have to be pursued in the setting of the principles of aid effectiveness, in particular the partnership with recipient countries, their ownership and the complementarity with other donors, as set out in the "European Consensus on Development" adopted jointly by the Council and the representatives of the governments of the member States meeting within the Council, the European Parliament and the Commission on 20 December 2005.

First, the Commission commits to prioritise basic health and education, and social cohesion as a whole in its programming and implementation role for country programmes covered by the DCI, and to include an MDG profile in the programming documents. In the dialogue with partner countries, the Commission will also encourage them to prioritise social sectors in their own development strategies.

Moreover, the Commission will endeavour to ensure that a benchmark of 20% of its allocated assistance under country programmes covered by the DCI will be dedicated, by the year of review 2009, to basic and secondary education and basic health, through project, programme or budget support linked to these sectors, taking an average across all geographical areas and recognising that a degree of flexibility must be the norm, such as exceptional assistance.

Finally, to ensure the accountability of the Commission towards these objectives, it commits to increased monitoring, evaluation and reporting, whereby particular attention shall be given to social sectors and to progress made towards achieving the Millennium Development Goals.

Commission Declaration on Sugar Art. 17:

It has been decided to assist the sugar Protocol ACP countries to adapt to the new conditions which will follow the reform of the EU common agricultural policy for sugar.

As Sugar Protocol countries are in a very diverse situation, the scheme will support country specific adaptation strategies.

The commitment and spending schedule will follow the gradual achievement of these strategies and be consistent with the transitional nature of the scheme due to end in 2013.

Joint Council and Commission Declaration to Art. 28(2) on the transfer of implementation tasks:

In relation to budget implementation tasks, the Commission has made a proposal for the revision of Council Regulation No 1605/2002, which will be adopted by the Council, establishing the conditions required for entrusting such budget implementation tasks to bodies referred to in Article 27 (1) a), b), c) of this Regulation.

Commission Declaration on committees Art. 35:

Meetings will be organised in such a way that opinions to be delivered and exchanges of view held are pooled according to each geographic (Latin America, Asia, Middle East, Central Asia, South Africa) and thematic (migration, non state actors, environment, investing in people, food security) programme.

Commission declaration on indicative amount for ENPI thematic programmes Art. 38 (4):

La Commission s'engage, lors de la programmation des programmes thématiques, à tenir compte de la ventilation géographique initialement proposée par la Commission entre pays éligibles sous l'instrument européen de voisinage et de partenariat [ENPI], d'un côté, et l'instrument de coopération au développement [DCI] de l'autre.