



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 December 2010

17902/10

**Interinstitutional File:
2010/0059 (COD)**

**DEVGEN 403
ACP 333
AGRI 551
WTO 405
CODEC 1520
PARLNAT 182**

COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 December 2010
to:	Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union

Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the Council position on the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation (original Commission proposal 'BAM amendments', COM(2010)102)
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Delegations will find attached Commission document COM(2010) 787 final.

Encl.: COM(2010) 787 final



EUROPEAN COMMISSION

Brussels, 13.12.2010
COM(2010) 787 final

2010/0059 (COD)

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PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**Council position on the adoption of a Regulation of the European Parliament and of the
Council amending Regulation (EC) No 1905/2006 establishing a financing instrument
for development cooperation (original Commission proposal 'BAM amendments',
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COM(2010)102)**

1. BACKGROUND

Date of transmission of the proposal to the European Parliament and
to the Council

(document COM(2010) 102 final – 2010/0059 COD)

17 March 2010

Date of the opinion of the European Parliament, first reading:

[21 October 2010].

Date of transmission of the amended proposal:

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Date of adoption of the position of the Council:

10 December 2010.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

African, Caribbean and Pacific (ACP) countries have traditionally had preferential access to the European Union (EU) market. Further to rulings by the WTO's Dispute Settlement and Appellate Bodies, the Union's banana trade regime had to be brought into conformity with WTO law. Thus, the Geneva Agreement on Trade in Bananas (GATB), initialled on 15 December 2009, settles all banana-related trade disputes and achieves WTO-compliance.

In the framework of the GATB, the European Commission agreed to propose a development programme to help the main ACP banana-exporting countries adapt to the changes in the EU's import regime. This ACP Banana Accompanying Measures (BAM) programme, the aim of which is to assist the restructuring of the banana sectors in the ten main ACP banana-exporting countries, requires an amendment of Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation (DCI).

The proposal is limited in time to the period 2010-2013 and is limited in scope in terms of its policy content and budgetary implications. It does not prejudice any future proposals for the new generation of external relations financial instruments under the next financial framework.

3. COMMENTS ON THE COUNCIL POSITION

3.1. General comments on the Council position

The European Commission can accept the Council position at first reading, which is the outcome of constructive negotiations between the three institutions. It is in line with the essential objectives and the underlying approach of the Commission's initial proposal and incorporates the European Parliament's amendments on the substance of the BAM provisions.

3.2. Main characteristics of the Council position

The position reflects the following key elements in line with the European Parliament's amendments:

- **Recitals:** A number of recitals have been expanded and others have been added to provide further explanations in relation to the context, content and objectives of the BAM.
- **Specific focus on poverty, livelihoods, small farmers and specification on the viability of strategies (Article 17a – Paragraph 1):** The Union's assistance has now been explicitly established as focusing on poverty eradication and improvement of living and working conditions of small farmers and other persons concerned.
- **Outermost regions of the EU and overseas countries and territories (Article 17a – Paragraph 1):** The Regulation now refers to the regional environment of eligible BAM countries, specifically the proximity to outermost regions of the EU and OCTs.
- **Bilateral trade agreements with Latin American countries (Article 17a – Paragraph 2):** Both multilateral and bilateral agreements relating to bananas concluded or in the process of being concluded are mentioned.
- **Distribution of funds (Article 17a – Paragraph 2):** The proposed criteria have been arranged by order of importance. Moreover, the allocation criteria will use data of a period not longer than five years before 2010, as well as a Commission study assessing the impact of the trade agreements on ACP countries.
- **Requirements in Multiannual Support Strategies (Article 17a – Paragraph 3):** A number of requirements (e.g. environmental profiles and ILO standards) to be included in the support strategies in each country have been specified.
- **Programme assessment (Article 17a – Paragraph 3):** The progress of the BAM programme will be assessed eighteen months before its end and appropriate recommendations are to be made.

In addition, an amendment originally tabled by the Commission (COM(2009)194) was introduced:

- **Taxes and duties (Article 25 – Paragraph 2):** The wording '*in principle*' is added to the non-eligibility of taxes, duties and other charges thus signalling the possibility of exceptions, these being regulated internally by the instructions given to Authorising Officers.

3.3. Specific issues (amendments by Parliament not acceptable to Council)

- **Delegated acts (Article 290 TFEU):** Parliament seeks by its first reading amendments to apply this procedure to the adoption of multiannual strategy papers by the Commission.

Despite long and intensive negotiations (notably trilogues held on 2 February, 23 March and 20 October) it was not possible to reach agreement on this issue. The Council has not accepted these amendments in its positions at first reading. The Commission is ready to continue efforts to reconcile the positions of the institutions and to find ways to meet the substantive concerns behind Parliament's amendments, in particular in ensuring that Parliament can exercise appropriate oversight over the formulation of external cooperation strategies and the proper implementation of external financial instruments.

4. CONCLUSION

The European Commission can accept the Council position at first reading.