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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 position of the Council on the adoption of
a Regulation of the European Parliament and of the Council amending
Regulation (EC) No. 1934/2006 establishing a financing instrument for
cooperation with industrialised and other high-income countries and territories.

Delegations will find attached Commission document COM(2010) 786 final.

Encl.: COM(2010) 786 final



EUROPEAN COMMISSION

Brussels, 13.12.2010
COM(2010) 786 final

2009/0059 (COD)

**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 position of the Council on the adoption of a Regulation of the European
Parliament and of the Council amending Regulation (EC) No 1934/2006 establishing a
financing instrument for cooperation with industrialised and other high-income
countries and territories**

**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 position of the Council on the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1934/2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories

1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2009) 197 final 2 – (2009)/0059 COD):	transmission: 21 April 2009 corrigendum: 30 November 2009, amended: 01 December 2009 (entry into force of the Lisbon Treaty)
Date of the opinion of the European Parliament, first reading:	21 October 2010.
Date of transmission of the amended proposal:	[...].
Date of adoption of the position of the Council:	10 December 2010.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

In the framework of the mid-term review of the external action financial instruments,¹ the Commission made this proposal in order to fill a legislative gap namely, the EU cannot finance activities which do not fall clearly into the category of Official Development Assistance (ODA) in forty-six of the EU's partner countries around the world.

This is because the Development Co-operation Instrument (DCI) regulation (Article 2(4)) excludes measures which do not meet ODA criteria, that are set by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC) (hence "DACable"). There is no other basic act which allows measures ineligible as ODA to be financed in the developing countries falling under the DCI.

As a result, some types of actions had to be financed outside the DCI under Preparatory Actions created in the budget by the European Parliament for this purpose (i.e. business and scientific exchanges with India and China, cooperation with middle-income-group countries in Asia and in Latin America). These Preparatory Actions ended in 2009. At the time an agreement was reached between the Commission and the relevant EP Committee Chairs, that European students and teachers participating in the external part of Erasmus Mundus would

¹ Communication from the Commission to the European Parliament and the Council: Mid-term review of the financial instruments for external actions COM(2009) 196 final of 21.4.2009

only be financed from the DCI until the end of 2009. Filling the gap should also ensure that some energy projects and public diplomacy activities that will not be ODA-eligible (e.g. in Asia, Central Asia and in Iraq/Iran) can be financed.

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 at first reading

The Commission can accept the Council position 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.

A compromise text was negotiated initially by Parliament, Council and Commission to achieve an agreement at Parliament's first reading originally foreseen in June 2010. To this end trilogues were held on 13 April and 5 May. However, an agreement was not possible either in June or July because of the specific issues mentioned below.

3.2. Main characteristics of the negotiated common position

The Council position reflects the following key elements:

- It is in the Union's interest to further deepen its relations with the developing countries in areas such as economic, commercial, academic, business and scientific exchanges – activities which even though in the EU interest, may not qualify as ODA.
- The instrument will finance measures which in principle do not qualify as ODA.

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.
- **Article 16 on the financial reference amount:** Parliament adopted an amendment to this article which the Council has not accepted in its first reading, preferring to retain the text proposed initially by the Commission. The Commission supports the Council position since it reflects the standard text on financial reference amounts which is included in every financial instrument. However, in order to facilitate agreement and re-assure the institutions, the Commission is ready to make the attached statement.

4. CONCLUSION

The Council position incorporates a negotiated compromise text which reflects to a very large extent the European Parliament's requests and amendments at first reading. The Commission can therefore accept the Council position at first reading.

Industrialised countries instrument – Com (2009) 197 final

Commission declaration 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 n°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 n° 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 n°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.