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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 4 April 2011

to: Mr Pierre de BOISSIEU, Secretary-General of the Council of the
European Union

Subject: Opinion of the Commission pursuant to Article 294, paragraph 7,
point (c) of the Treaty on the Functioning of the European Union, on the
European Parliament's amendments to the Council's position regarding
the proposal for 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 (ICI Plus)

Delegations will find attached Commission document COM(2011) 167 final.

Encl.: COM(2011) 167 final



EUROPEAN COMMISSION

Brussels, 1.4.2011
COM(2011) 167 final

2009/0059 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 294, paragraph 7, point (c) of the Treaty on the Functioning of the European Union,
on the European Parliament's amendments
to the Council's position regarding the
proposal for a**

**REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**amending Regulation (EC) N°1934/2006 establishing a financing instrument for
cooperation with industrialised and other high-income countries and territories (ICI
Plus)**

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cooperation with industrialised and other high-income countries and territories (ICI
Plus)**

1. INTRODUCTION

Article 294 (7) (c) of the Treaty on the Functioning of the European Union provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the amendments proposed by the Parliament.

2. BACKGROUND

Date on which the proposal was sent to Parliament and Council: 21 April 2009

Doc COM (2009) 197 final 2-2009/0059 (COD) corrigendum 30 November 2009, amended 01 December 2009 (entry into force of the Lisbon Treaty)

Date of Parliament's opinion at first reading: 21 October 2010

Date on which the amended proposal was sent to Parliament and Council: none

Date of political agreement on the Council position: none

Date of formal adoption of the Council position: 10 December 2010

Date of Parliament's opinion at second reading: 3 February 2011

3. PURPOSE OF THE PROPOSAL

In the framework of the mid-term review of the external action financial instruments, 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 situation derives from the fact that the DCI regulation (Article 2(4)) excludes most measures which do not meet the ODA criteria, which are set by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC(hence “DACable”) with only limited exceptions. There are no other legal provisions allowing measures ineligible as ODA to be financed in the countries falling under the DCI.

In several areas, the Commission and Parliament had divergent views on the ODA-eligibility (“DAC-ability”) of certain actions. EP identified a number of problematic examples which it did not consider to be ODA during the “democratic scrutiny” process (when the Commission consults EP on strategy papers and multi-annual programmes) and also during the Comitology procedure (when it scrutinised annual action programmes). Subsequently EP passed a series of resolutions condemning the Commission for exceeding its implementing powers in adopting such projects under the DCI Regulation and calling for their withdrawal.

As result, some types of actions were financed outside DCI under the Preparatory Actions created by EP 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). The Preparatory Actions ended in 2009. An agreement was reached by Commissioner Ferrero-Waldner and the EP committee chairs concerned those **European students and teachers participating in the external part of Erasmus Mundus** would only be financed from 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 Commission proposal is a pragmatic, ad hoc solution to this problem: it simply adds the DCI countries to the existing Industrialised Countries Instrument. This instrument was considered the most appropriate because the EU uses it to finance cooperation in pursuit of non development-related interests. Its general policy objective will apply also to DCI countries: *‘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 environment for the development of the relations of the Community with these countries and territories and to promote dialogue while fostering Unions interests.’*

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

The Commission proposal was **accepted already by EP in budgetary terms**: to replace the Preparatory Actions and provide for the non-ODA actions, new budget lines were created in the 2010 budget with the necessary appropriations, pending formal adoption of the proposal. If the proposal is not adopted, then the appropriations in the budget cannot be implemented in the absence of a legal basis.

4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

4.1 Amendments accepted by the Commission

The Commission can accept the text as it was agreed between the three institutions during the trilogues which took place in October and November 2010 (Recital 1 ;2; 3; 4; 5; 6; 7; 8; 9; and Articles 1; 2; 3; 4; 5.2; 7; 8; 9.1; 12; 13 and 14). For information these Recitals and Articles have already been approved by the Council in first reading.

4.2 Amendments rejected by the Commission

The Commission cannot accept the Articles relating to delegated acts and Comitology issues (Recital 8a, Article 6.1; 14a; 14b; 14c (delegated acts), Article 6.3; deleting Article 15 (Comitology))

Commission cannot accept the Article 16 on the financial provisions which states that DCI money cannot be used to fund the ICI Plus. This amendment is not acceptable. The decision on the source of funding is the prerogative of the budget authorities when they adopts each year the budget. It cannot be part of a legislative act. The Article has to stick to standard provisions as set out in every financial instrument. However, in order to facilitate agreement and re-assure the institutions, the Commission is ready to make a statement, recalling 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.

5. CONCLUSION

The discussions with the co-legislators shall continue after the second reading, in order to work on a consensual solution preferably giving EP substantive scrutiny rights for the remainder of the current Multiannual Programming Period and leaving options open for the next one, including the possibility of having recourse to delegated acts while fully respecting the criteria established in Article 290 TFEU.