



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 6 April 2011**

**8729/11**

---

**Interinstitutional File:  
2009/0060A (COD)**

---

**DEVGEN 102  
NIS 38  
PESC 452  
RELEX 354  
FIN 241  
ACP 85  
CADREFIN 19  
COHOM 98  
CODEC 599  
PARLNAT 109**

**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(7)(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 1905/2006 establishing a financing  
instrument for development cooperation

---

Delegations will find attached Commission document COM(2011) 178 final.

---

Encl.: COM(2011) 178 final



EUROPEAN COMMISSION

Brussels, 1.4.2011  
COM(2011) 178 final

2009/0060/A (COD)

**OPINION OF THE COMMISSION**

**pursuant to Article 294(7)(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 1905/2006 establishing a financing instrument for  
development cooperation**

**OPINION OF THE COMMISSION**

**pursuant to Article 294(7)(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 1905/2006 establishing a financing instrument for  
development cooperation**

**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

Document COM(2009) 194 final – 2009/0060A COD (Corrigendum of 30 November 2009, amended 1 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**

The various Union financial instruments for external action contain a slight inconsistency regarding exceptions to the principle of non-eligibility for Union financing of costs related to taxes, duties and other charges.

Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation (DCI) and Regulation 1889/2006 establishing a financing instrument for the promotion of democracy and human rights worldwide (EIDHR) do not provide

for some flexibility as regards the non-eligibility of such costs for funding. The other instruments lay down that EU support may not be used to finance these costs “in principle”: they therefore allow for flexibility on a case-by-case basis, and the Authorising Officer responsible may, where appropriate, decide to accept eligibility in the interests of sound financial management and proper implementation of programmes and projects. Indeed, it is essential to preserve flexibility where a deadlock risks to occur because exemption mechanisms are absent or impractical (owing, for example, to the extreme complexity of procedures in the beneficiary country, or in the case of regional projects).

Therefore the Commission, in the framework of the Mid-Term Review of the financial instruments for external action, has proposed to align the relevant provisions of the DCI and EIDHR instruments on the other instruments by adding the wording “in principle” 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.

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

##### **4.1. Amendments accepted by the Commission**

N/a

##### **4.2. Amendments rejected by the Commission**

The Commission cannot accept the amendments relating to delegated acts and Comitology issues (Recital 2a; Articles 17(2), 21, 22(3), 23, 33, 34(1), 35, 35a, 35b).

#### **5. CONCLUSION**

The discussions with the co-legislators shall continue after the second reading, in order to work on a consensual solution preferably giving substantive scrutiny rights to the European Parliament 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.