

POSITION (EU) No 2/2011 OF THE COUNCIL AT FIRST READING

with a view to 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

Adopted by the Council on 10 December 2010

(2011/C 7 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

financing instrument for the promotion of democracy and human rights worldwide⁽⁷⁾, and Regulation (EC) No 1905/2006 of the European Parliament and of the Council⁽⁸⁾.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 209(1) thereof,

- (2) In implementing Regulation (EC) No 1905/2006 inconsistencies have emerged regarding exceptions to the principle of non-eligibility for Union financing of costs related to taxes, duties and other charges. It is therefore proposed to amend the relevant provisions of that Regulation in order to align it with the other instruments.

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure⁽¹⁾,

- (3) This Regulation does not go beyond what is necessary in order to achieve the objective pursued, in accordance with Article 5(4) of the Treaty on European Union.

Whereas:

- (4) Regulation (EC) No 1905/2006 should therefore be amended accordingly,

- (1) A new framework for planning and delivering assistance was established in 2006 in order to make the Community's external assistance more effective and transparent. It contains Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)⁽²⁾, Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument⁽³⁾, Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories⁽⁴⁾, Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability⁽⁵⁾, Council Regulation (Euratom) No 300/2007 of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation⁽⁶⁾, Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 establishing a

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 25 of Regulation (EC) No 1905/2006, paragraph 2 is replaced by the following:

- '2. Union assistance shall not in principle be used for paying taxes, duties or charges in beneficiary countries.'

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

⁽¹⁾ Position of the European Parliament of 21 October 2010 (not yet published in the Official Journal) and position of the Council at first reading of 10 December 2010. Position of the European Parliament of ... (not yet published in the Official Journal).

⁽²⁾ OJ L 210, 31.7.2006, p. 82.

⁽³⁾ OJ L 310, 9.11.2006, p. 1.

⁽⁴⁾ OJ L 405, 30.12.2006, p. 41.

⁽⁵⁾ OJ L 327, 24.11.2006, p. 1.

⁽⁶⁾ OJ L 81, 22.3.2007, p. 1.

⁽⁷⁾ OJ L 386, 29.12.2006, p. 1.

⁽⁸⁾ OJ L 378, 27.12.2006, p. 41.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the European Parliament
The President

For the Council
The President

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STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 21 April 2009, the Commission adopted its proposal for a Regulation amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation and Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

The European Parliament adopted its first reading opinion on 21 October 2010.

The Council adopted its position at first reading on 10 December 2010.

II. OBJECTIVE

The Development Cooperation Instrument (DCI) is one of only two EU financial instruments for external action not providing for an exception to the principle of the non-eligibility for EU funding of costs related to taxes, duties and other charges. The instrument for the promotion of democracy and human rights worldwide (EIDHR) is the other case in point.

All the other EU financial instruments for external action lay down that EU support may not be used to finance such costs *in principle*, thus allowing for flexibility on a case-by-case basis, where appropriate, in the interests of proper implementation of programmes and projects.

The objective of the Commission proposal is to align the relevant provision of this instrument on the other instruments, by adding the words 'in principle' in Article 25, paragraph 2 of the Regulation.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

The Council had no difficulties whatsoever with the single change suggested by the Commission in its initial proposal with a view to harmonise relevant provisions in existing financial instruments.

The Council also accepted three rather technical amendments adopted by the European Parliament, for the sake of clarity and accuracy. In particular, the Council agreed to the splitting of the initial proposal into two in order to reflect that two distinct instruments were concerned, the DCI and the EIDHR.

The Council has not been able, however, to accept those amendments adopted by the European Parliament which introduce the application of the delegated acts procedure (Article 290 TFEU) for the adoption of multiannual cooperation programmes and strategy papers. The Council believes that the multiannual cooperation programmes, not being legally binding acts, do not constitute acts of general application, supplementing or amending the basic act. They constitute implementing measures within the meaning of Article 291 TFEU.

IV. CONCLUSION

While the proposal of the Commission did not present any difficulty to the Council, the Council accepted a number of amendments adopted by the European Parliament.

The Council considers that its position at first reading is a balanced compromise and calls on the European Parliament to go along with this text in order to preserve the spirit and objective of the initial proposal, i.e. to ensure the consistency of the EU financial instruments for external action and to allow minimal but necessary flexibility in their implementation.