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*****II**

DRAFT RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation
(11944/2/2006– C6-0357/2006 – 2004/0220(COD))

Committee on Development

Rapporteur: Gay Mitchell

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation (11944/2/2006 – C6-0357/2006 – 2004/0220(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (11944/2/2006 - C6-0357/2006),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2004)0629)²,
 - having regard to the amended Commission proposal (COM(2004)0629/2),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Development (A6-0000/2006),
1. Approves the common position;
 2. Notes that the act is adopted in accordance with the common position;
 3. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 4. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Union;
 5. Instructs its President to forward its position to the Council and Commission.

¹ *Texts Adopted* of 18.5.2006, P6_TA(2006)0217.

² Not yet published in OJ.

EXPLANATORY STATEMENT

1. Background

The Commission's proposal for a regulation establishing a financing instrument for development cooperation and economic cooperation, which formed the start of the procedure leading to a new legal base for EC development spending, was dated 29 September 2004. For two years after publication of the proposal, the legislative process followed a path that was tortuous, convoluted and at times fraught with difficulties. But the text has come a very long way in that time.

The view of your rapporteur on the original proposal was that it was very extreme and totally unacceptable to Parliament. It attacked both Parliament's prerogatives under co-decision and the principles of development policy itself. The first response, signalling Parliament's intention to reject the proposal, was adopted unanimously in the Development Committee and supported, equally unanimously, by the three other committees which gave opinions. This approach brought the Commission and the Council to the negotiating table and ultimately convinced them to respect Parliament's co-decision powers, not only for the development instrument but also for other External Actions instruments of the 'Prodi package'.

For the development instrument, there have been very many achievements resulting from the protracted and difficult negotiations - so much so that the shape of the final regulation will be unrecognisable to those who framed that initial proposal. There were times when the approach taken by other institutions amounted to pressure, rather than negotiation and respect for the European Parliament as co-decision maker. It was also surprising that, at times, the Development Committee had to stand against other forces in Parliament in which it was less well understood that the powers and prerogatives of the institution itself were at stake. Throughout all this, the Development Committee stayed united, and stood its ground.

2. Council Common Position

The Common Position transmitted to Parliament by Council on 23 October 2006 includes many elements that were incorporated at the request of Parliament. Among the most important are:

a) Time-limited legislation

The initial proposal from the European Commission contained no expiry-date or mid-term review clause. These were agreed, during the earliest negotiations, for all External Actions instruments, so they will all now expire at the end of the new Financial Perspective in 2013 and the revision process will start in 2009.

b) Specific instrument for development policy

It was a matter of great concern to the Development Committee that the original proposal did not foresee a financing instrument specifically for development policy. Rather, it mixed policy for developing countries with policy for industrialised countries, making it impossible to set clear objectives or specific policy priorities for either of them. Following much disagreement about the legislative architecture for External Actions, the Development

Committee negotiators obtained agreement for industrialised countries to be subject to different legislation, and a new proposal for them has been received by the International Trade Committee. The Common Position enshrines what the Development Committee wanted - an instrument specifically geared to developing countries, called the Development Cooperation Instrument, or DCI.

Parliament also battled for, and won, a separate Instrument for Human Rights, which will be the continuation of the European Initiative for Democracy and Human Rights. The legislative procedure for this instrument is ongoing.

c) Single legal base for development - Article 179

Along with the discussions on the legislative architecture, there was a related debate on the legal base to apply to the DCI. The original proposal was based on two articles of the EC Treaty - Article 179, which covers development, and Article 181a, which relates to cooperation with third countries. Your rapporteur's argument, in line with legal advice from the Legal Services of Parliament and Council, was that Article 181a does not apply to developing countries and the DCI should be based on Article 179 only. In this Parliament has been fully successful.

d) Policymaking by co-decision

Another of the major problems with the Commission's initial proposal was that it sought to remove, almost completely, Parliament's right to set policy for developing countries by co-decision. The Commission intended to take policymaking out of the scope of legislation and use non-binding communications instead. The only binding policy provisions would then have been included in the strategy papers for each country, region or thematic programme - and these were to be adopted by comitology, without input from Parliament.

Along with Council, the Development Committee negotiators rejected the approach of making policy by means of Commission communications, and concentrated on ensuring that policymaking remained subject to the legislative co-decision procedure. The Common Position negotiated with Council contains very large amounts of policy content, almost all of it included in response to Parliament's concerns. This is mainly based on the policy content of the 13 policy regulations which will be replaced by the new DCI, almost all of which had already been agreed by Parliament and Council in co-decision.

e) More detailed financial provisions

The financial provisions of the proposal were another area of very serious concern: they were extremely general, and very far from the level of detail Parliament, as part of the budgetary authority, was accustomed to handling. The only information given was the total financial allocation for the whole instrument, along with a figure for ACP cooperation which was subsequently removed when the European Council decided to keep the EDF outside the budget. In the past there had been a separate co-decided financial allocation for each programme, enshrined in separate regulations, so the Development Committee negotiators insisted this practice should continue. The Common Position now includes a breakdown of funding by programme, and in some cases within a programme (such as non-state actors, which now have a joint programme with local authorities, making it necessary to request a further breakdown of funding in order to guarantee that they will continue to receive funding very close to their annual allocations in past years).

3. Breaking new ground

There are also areas where the new DCI will depart markedly from all other development legislation that has gone before it, and this is where Parliament has made really major advances.

a) OECD Development Assistance Committee legally recognised

The new DCI will for the first time enshrine in legal text the internationally-accepted definition of development policy set by the OECD Development Assistance Committee. This is an essential step to preserve the development budget from being poached for other policy objectives. One hundred percent of geographic programmes will be framed so as to conform to the DAC eligibility criteria for Official Development Aid, and the same will be true for at least 90% of allocations under the thematic programmes. The remaining 10% of thematic allocations will be used for non-development actions under the Migration programme and the Environment programme, including the implementation of international environment agreements and support to the secretariats of a number of major international conventions in the field of environment.

b) Agreement on spending targets attached to DCI

A Commission declaration attached to the new DCI will contain, also for the first time, the benchmark that the Development Committee has been using since 2003 to promote increased focus on the key MDG sectors of basic education and basic health. The Commission has never before accepted the committee's 20% benchmark for these sectors, and even though Parliament has written it into the budget for the last three years, they have refused to implement it. Allocations to these sectors have always been woefully low. But now, in the declaration attached to DCI, the Commission signs up to aiming to achieve this benchmark by 2009 (with the additional category of secondary education included, since this is particularly important for the middle-income countries of Latin America). Along with the other Members of the Negotiating Team, your rapporteur views this as a very significant gain for Parliament indeed.

c) Democratic scrutiny of programming documents - moving forward

Some more headway has also been made on the matter of the dialogue between Parliament and the Commission on the draft strategy papers, to allow effective parliamentary scrutiny of the implementation of DCI. The particular matter of concern was to ensure Parliament could intervene in time for its influence to be meaningful, before the strategy papers are adopted. Although there were sensitivities with Council on this subject, Parliament achieved an assurance that the Commission will always be open to discussions with MEPs on general or country-specific topics. Parliament can determine the formation in which it presents itself for such a dialogue. This agreement will be formalised in an exchange of letters between the Chair of Development Committee and Commissioners Ferrero-Waldner and Michel before the vote is taken on the Common Position text.

d) Increased role for Parliament in the mid-term review

Although the legislative text states that the instrument shall be revised “no later than 31 December 2010”, Parliament and Commission agreed that before the Commission undertakes the review, Parliament shall examine the operation of the instrument to identify any dysfunctional situations that may have arisen. Parliament’s report will be considered by the

Commission when it carries out the review of the instrument. This review will be carried out in 2009. If problems are identified that require an adaptation of the instrument, the Commission will submit the necessary legislative proposals. This agreement will be confirmed by the Commission before the vote is taken on the Common Position text.

4. Recommendation of the Rapporteur

The Common Position represents the agreement reached at the end of the negotiations and endorsed by the Development Committee at its meeting of 3 October 2006.

On the issue of reproductive health, your rapporteur cannot in good conscience support the terminology used in Recital 18, Article 5 (2) b) and Article 12 (2) a), if the WHO definition which includes "interrupting unwanted pregnancies" applies. In my approach to the DCI, I sought to accommodate others and was extremely disappointed that my sincerely held concerns on this issue did not receive support. I give notice therefore that I will support efforts to amend this wording.

With this exception, your rapporteur considers the Common Position as established by the Council a very good outcome for the European Parliament.