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REPORT

on the proposal for a Council regulation on access to Community External Assistance
(8977/2005 – C6-0156/2005 – 2005/0806(CNS))

Committee on Development

Rapporteur: Michael Gahler

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 proposal for a Council regulation on access to Community External Assistance
(8977/2005 – C6-0156/2005 – 2005/0806(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Council text (8977/2005)¹
 - having regard to the initial Commission proposal to the European Parliament and the Council (COM(2004)0313)²,
 - having been informed by the Council of its decision to split the initial proposal to the European Parliament and the Council,
 - having regard to Article 181a of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0156/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Development (A6-0239/2005),
1. Approves the Council text as amended;
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Asks the Council to consult Parliament again if it intends to modify substantially the text submitted for consultation;
 4. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Council	Amendments by Parliament
Amendment 1 Recital 1	
(1) The practice of tying the granting of aid, directly or indirectly, to the purchase of goods and services procured by means of that aid in the donor country reduces its	(1) The practice of tying the granting of aid, directly or indirectly, to the purchase of goods and services procured by means of that aid in the donor country reduces its

¹ Not yet published in OJ.

² Not yet published in OJ.

effectiveness and is not coherent with a pro-poor development policy. The untying of aid is not an aim in itself, but should be used as a tool to cross-fertilise other elements in the fight against poverty such as ownership, regional integration and capacity building.

effectiveness and is not coherent with a pro-poor development policy. The untying of aid is not an aim in itself, but should be used as a tool to cross-fertilise other elements in the fight against poverty such as ownership, regional integration and capacity building, ***with a focus on empowering local and regional suppliers of goods and services in developing countries.***

Amendment 2
Recital 6

(6) On 4 September 2003, a Resolution from the European Parliament on the untying of aid¹ noted the need to further untie Community aid. It supported the modalities detailed in the afore-mentioned Communication and agreed to the options proposed. It highlighted the need for further debate towards more untying on the base of complementary studies and documented proposals.

(6) On 4 September 2003, a Resolution from the European Parliament on the untying of aid¹ noted the need to further untie Community aid. It supported the modalities detailed in the afore-mentioned Communication and agreed to the options proposed. It highlighted the need for further debate towards more untying on the base of complementary studies and documented proposals, ***and called explicitly for "a clear preference for local and regional cooperation, prioritising - in ranking order - suppliers from the recipient country, neighbouring developing countries and other developing countries", in order to strengthen the efforts of the beneficiary countries to improve their own production at national, regional, local and family level, as well as actions aiming at improving the availability and accessibility to the public of foodstuffs and basic services, consistent with local habits and production and trading systems.***

Amendment 3
Recital 7

(7) Several elements need to be addressed

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¹ A5/2003/190, Bulletin/2003/9, 1.6.64

in order to define the access to Community External Assistance. The rules of eligibility defined the access of persons in Article 3. The rules of origin defined the access of supplies and materials purchased by eligible person in Article 4. ***The access of a specific category of persons is allowed in Article 3 under the condition of reciprocity.*** The definition and modalities of implementation of reciprocity are contained in Article 5. Derogations and their implementation are defined in Article 6. Specific provisions concerning the operations financed through an international organisation, a regional organisation, or co-financed with a third country, are defined in Article 7.

in order to define the access to Community External Assistance. The rules of eligibility defined the access of persons in Article 3. The rules of origin defined the access of supplies and materials purchased ***and experts engaged*** by eligible persons in Article 4. The definition and modalities of implementation of reciprocity are contained in Article 5. Derogations and their implementation are defined in Article 6. Specific provisions concerning the operations financed through an international organisation, a regional organisation, or co-financed with a third country, are defined in Article 7.

Amendment 4
Recital 8 a (new)

(8a) When awarding tenders under a Community instrument, special consideration will be given to respect for internationally agreed core labour standards of the International Labour Organization (ILO), e.g. the conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination with respect to employment and occupation, and abolition of child labour.

Amendment 5
Recital 8 b (new)

(8b) When awarding tenders under a Community instrument, special consideration will be given to respect for the following internationally agreed environmental conventions: the Convention on Biological Diversity of 1992, the Cartagena Protocol on Biosafety of 2000 and the Kyoto Protocol to the

***United Nations Framework Convention
on Climate Change of 1997.***

Amendment 6
Article 3, paragraph 2

(2) Participation in the award of procurement or grant contracts financed under a Community instrument with thematic scope, as defined in Annex I Part A, shall be open to all legal persons who are nationals of a developing ***or transition*** country, as defined by the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD/DAC) ***lists***, contained in ***the*** Annex II, in addition to those legal persons already eligible by virtue of the respective instrument.

(2) Participation in the award of procurement or grant contracts financed under a Community instrument with thematic scope, as defined in Annex I Part A, shall be open to all legal persons who are nationals of a developing country, as defined by the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD/DAC) ***List*** contained in Annex II, in addition to those legal persons already eligible by virtue of the respective instrument.

Amendment 7
Article 3, paragraph 3

(3) Participation in the award of procurement or grant contracts financed under a Community instrument with geographical scope, as defined in Annex I Part B, shall be open to all legal persons who are nationals of a developing ***or transition*** country as defined by the OECD/DAC ***lists***, contained in ***the*** Annex II, and which are expressly mentioned as eligible, as well as to those already mentioned as eligible by the respective instrument.

(3) Participation in the award of procurement or grant contracts financed under a Community instrument with geographical scope, as defined in Annex I Part B, shall be open to all legal persons who are nationals of a developing country as defined by the OECD/DAC ***List***, contained in Annex II, and which are expressly mentioned as eligible, as well as to those already mentioned as eligible by the respective instrument.

Amendment 8
Article 3, paragraph 5

(5) The eligibility rules in this article do not apply to the experts proposed by tenderers taking part in the award of procurement contracts. Those experts can

deleted

be of any nationality.

Amendment 9
Article 3 a (new)

Article 3a

Experts

All experts engaged by tenderers as defined in Articles 3 and 7 may be of any nationality. This Article is without prejudice to the qualitative and financial requirements set out in the Community's procurement rules.

Amendment 10
Article 4

All supplies and materials purchased under a contract financed under a Community instrument must originate from the Community or from an eligible country as defined in Article 3 herein. Origin for the purpose of this Regulation is defined in the relevant Community legislation on rules of origin for customs purposes.

All supplies and materials purchased under a contract financed under a Community instrument must originate from the Community or from an eligible country as defined in **Articles 3 and 6** herein. Origin for the purpose of this Regulation is defined in the relevant Community legislation on rules of origin for customs purposes.

Amendment 11
Article 5, paragraph 1

(1) Reciprocal access to **EC** external assistance shall be granted for a country falling under the scope of Article 3 (4), whenever such country grants eligibility on equal terms to the Member States of the European Union.

(1) Reciprocal access to **the Community's** external assistance shall be granted for a country falling under the scope of Article 3 (4), whenever such country grants eligibility on equal terms to the Member States of the European Union **and to the beneficiary country concerned.**

Amendment 12
Article 5, paragraph 2

(2) The granting of reciprocal access to **EC** external assistance shall be based on a comparison between the EU and other donors and shall ***be done at entire sector*** level, as defined by the OECD/DAC categories, or ***entire*** country level, ***either*** donor or recipient. The decision ***of granting*** this reciprocity to a donor country shall be based on the transparency, consistency and proportionality of the aid provided by that donor, including its qualitative and quantitative nature.

(2) The granting of reciprocal access to ***the Community's*** external assistance shall be based on a comparison between the EU and other donors and shall ***proceed at sectoral*** level, as defined by the OECD/DAC categories, or ***at*** country level, ***whether it be a*** donor or a recipient ***country***. The decision ***to grant*** this reciprocity to a donor country shall be based on the transparency, consistency and proportionality of the aid provided by that donor, including its qualitative and quantitative nature.

Amendment 13
Article 5, paragraph 3

(3) Reciprocal access to **EC** external assistance shall be established by means of a specific decision concerning a given country or a given regional group of countries. Such a decision shall be adopted in accordance with ***the*** Council Decision 1999/468/EC¹ under the procedures and relevant committee ***ruling the instrument*** concerned. Such a decision shall ***be in force*** for a minimum period of one year.

(3) Reciprocal access to ***the Community's*** external assistance shall be established by means of a specific decision concerning a given country or a given regional group of countries. Such a decision shall be adopted in accordance with Council Decision 1999/468/EC¹ under the procedures and relevant committee ***associated with the act*** concerned. Such a decision shall ***remain in force*** for a minimum period of one year.

Amendment 14
Article 5, paragraph 4

(4) Reciprocal access to **EC** external assistance shall be automatically granted ***in accordance with Point II a) of the 2001 Recommendations of the OECD/DAC on Untying of Official Development Assistance to the Least Developed Countries, referred in Annex IV***, to the third countries listed in Annex III.

(4) Reciprocal access to ***the Community's*** external assistance ***in the Least Developed Countries as set out in Annex II*** shall be automatically granted to the third countries listed in Annex III.

¹ OJ L 231, 29.08.2001

Amendment 15
Article 5, paragraph 5

(5) The beneficiary countries, shall be consulted *to the maximum extent* in the process described in paragraphs *(1) to (3)*.

(5) The beneficiary countries shall be consulted in the process described in paragraphs *1, 2 and 3*.

Amendment 16
Article 7, title

Operations involving international institutions or *third countries*

Operations involving international institutions or *co-financing*

Amendment 17
Article 7, paragraph 1

(1) Whenever Community funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible according to Article 3 as well as to all legal persons who are eligible according to the rules of such organisation, care being taken for guaranteeing equal treatment to all donors. The same rules apply for supplies *and* materials.

(1) Whenever Community funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible according to Article 3 as well as to all legal persons who are eligible according to the rules of such organisation, care being taken for guaranteeing equal treatment to all donors. The same rules apply for supplies, materials *and experts*.

Amendment 18
Article 7, paragraph 2

(2) Whenever Community funding covers an operation co-financed with a third country, subject to reciprocity as defined in Article 5, or with a regional organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible according to Article 3 as well as to all legal persons who are *nationals* of such third country *or countries member of this* regional organisation. The same rules apply for supplies *and* materials.

(2) Whenever Community funding covers an operation co-financed with a third country, subject to reciprocity as defined in Article 5, or with a regional organisation, *or a Member State*, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible according to Article 3 as well as to all legal persons who are *eligible under the rules* of such *a* third country, regional organisation *or Member State*. The same rules apply for supplies, materials *and experts*.

Amendment 19
Article 7, paragraph 3

(3) The eligibility rules in this article do not apply to the experts proposed by tenderers taking part in the award of procurement contracts. Those experts can be of any country. **deleted**

Amendment 20
Article 7 a (new)

Article 7a

Respect for core principles and strengthening local markets

(1) In order to accelerate the eradication of poverty through the promotion of local capacities, markets and purchases, special consideration shall be given to local and regional procurement in partner countries.

(2) Tenderers who have been awarded contracts shall respect internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination with respect to employment and occupation, and abolition of child labour.

(3) Access by developing countries to Community external assistance shall be enabled by all technical assistance deemed appropriate.

EXPLANATORY STATEMENT

0. Preliminary remark

On 26 April 2004, the Commission presented to the European Parliament and to the Council a proposal for a regulation on the access to Community external assistance, designed to further untie Community aid in areas covered by tendering procedures for goods and services for the purpose of external aid. The Commission's intention was to introduce, by means of one single horizontal regulation (under the codecision procedure), the necessary modifications to the access to Community aid in the existing 26 thematic and geographical Community instruments in the field of Community external assistance.

On 29 April 2005, the Council notified the European Parliament of its decision to split the Commission's initial proposal and on 18 May 2005 Parliament received a proposal for a regulation of the Council, applying the consultation procedure to the 10 Community instruments listed in the Annex, which have been established under the consultation procedure.

Parliament, although insisting as a matter of principle that the codecision procedure should be applied whenever this is legally and technically possible, accepts in this particular case the Council's decision to split the regulation on legal grounds (regulations which have been established under the consultation procedure, should also be modified using the appropriate procedure), but clearly states that this acceptance can not be interpreted as a precedent for any future proposals for legislative texts submitted to it.

1. Context

This horizontal regulation establishes the access of suppliers to all development assistance programmes financed from the EU budget. It provides for the eligibility of persons and goods under instruments, laying down criteria and derogations.

Untying has gained particular momentum at the EU level. Following the Monterrey Consensus, the European Commission initiated a proposal for the further untying of EC programmes and making progress towards full untying of Member States' bilateral aid. As the largest donor bloc, providing over 50% of world aid, this initiative can have great impact on the donor community. It is estimated that around 49% of European bilateral aid remains tied or partially tied. Fully untying this aid alone could make it \$2-3 billion more effective.¹

Both the Council (Conclusions of the GAERC of 20.5.2003) and the European Parliament (the 2003 Fernández Martín report (A5-190/2003) have called for a regulation on the untying of aid going beyond the 2001 OECD/DAC "Recommendation on Untying Official Development Assistance to the Least Developed Countries". With this proposal, the Union is also heeding the recommendation of the DAC in its 2002 Peer review of the EU's development policy: "The proposal to consider untying EU ODA without distinction between

¹ In: "An independent study on the further untying of European aid", July 2004

the LLDCs and other developing countries is welcomed, as is the inclusion of food aid and transportation. It will be necessary for the EC to set out a time frame for implementation, as well as maintain elements of its present approach that benefit developing countries (e.g. price preferences framework with ACP countries) in ways that are fully consistent with the principles, understandings, and agreements of the DAC Recommendation.”

2. Scope of the proposed regulation

Recital 1 states that "the untying of aid is not an aim in itself, but should be used as a tool to cross-fertilise other elements in the fight against poverty such as ownership, regional integration and capacity building”. These objectives correspond to the goals for untying aid set out in the 2001 OECD/DAC recommendation.

Unfortunately, the reduction of transaction costs seems to have been the sole yardstick for determining whether and how certain instruments of development aid should be untied.

The question of untying aid and the specific modalities for each instrument must be approached from a developmental point of view: the instruments to be untied and the modalities for untying must be determined in function of their contribution to the attainment of the main goals of development assistance: poverty reduction through the achievement of the Millennium Development Goals, empowerment of local communities in the beneficiary countries, so that they can assume full ownership of their own development process (inter alia through local capacity building), regional integration as a means of smoother integration into the world economy. If untying aid is not considered and regulated in this context, there is a risk that it may become counterproductive and hinder the attainment of the development objectives it intends to foster. It is in this sense that the proposed regulation poses a number of problems.

3. Problems

A. Concerning the donors

The opening of the participation in the award of contracts to industrialized countries and countries in transition on the sole basis of economic and financial criteria, without any non-financial conditions attached to it, may generate detrimental consequences for the EU, as the result may be that contracts are adjudicated to countries that draw their competitive advantage from the social dumping they practice. This would mean that the EU throws overboard, in the context of development cooperation, a number of core values (social, environmental, sustainable development) that it applies internally and in the framework of the Cotonou agreement. The regulation should link the participation in an invitation to tender to the bidder's formal adherence to a set of minimal standards (Conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and abolition of child labour). These criteria should be applied as a condition for the purchase of any goods and services. Companies based in or operating from countries that have not formally adhered to these international conventions should be excluded from participating in tenders.

Reciprocity with third countries (Article 5)

The regulation does not impose on the third countries it proposes to allow to compete for tenders for EU external assistance (particularly the transition countries) any reciprocity for the opening of the markets for procurement of goods and services to the beneficiary countries of this external assistance. This conditionality should also be introduced.

The notion of reciprocity, as specified in paragraph (2) is too vague and needs specification (indicators making it possible to measure "consistency" and "proportionality" of the aid provided by a donor, and its "quantitative and qualitative nature"). This could be done by setting up joint bilateral technical committees with experts from the EU and the other donor country.

B. Concerning the beneficiaries

It is noted that the regulation ignores the Council's May 2003 conclusion that, with regard to developing countries, untying of aid should take place "under the following conditions: highest possible involvement of the beneficiary country, taking into account in particular the need to ensure the development of national and/or regional capacities". In its resolution A5-190/2003, Parliament has repeated this Council recommendation, specifying that the provisions on untying aid must "be linked to a clear preference for local and regional cooperation, prioritising – in ranking order – suppliers from the recipient country, neighbouring developing countries, and other developing countries". Without the introduction into the regulation of such explicit preference system, this objective will in all likelihood not be attained, given that local and regional actors find themselves in a disadvantageous competitive position as a result of the technological, economic, institutional and structural constraints under which they have to operate.

C. Operations involving international institutions or third countries (Article 7)

In order to ensure compliance with the developmental objectives, the regulation should contain by a paragraph exempting from its application actions with the objective of supporting the efforts of the beneficiary countries to improve their own food production at regional, national, local and family level, as well as actions aiming at improving the availability and accessibility to the public of foodstuffs and basic services, consistent with local habits and production and trading systems, and fully integrated into the beneficiary's development policy. To these actions the preferences called for by the European Parliament (see previous point) should apply.

PROCEDURE

Title	Proposal for a Council regulation on access to Community External Assistance		
References	8977/2005 - C6-0156/2005 -2005/0806(CNS)		
Legal basis	Article 181a EC		
Basis in Rules of Procedure	Rule 51		
Date of consulting Parliament	18.5.2005		
Committee responsible Date announced in plenary	DEVE 7.6.2005		
Committee(s) asked for opinion(s) Date announced in plenary	BUDG 7.6.2005	INTA7.6.20 05	AFET 7.6.2005
Not delivering opinion(s) Date of decision	BUDG 8.7.2005	INTA 13.6.2005	AFET 28.6.2005
Enhanced cooperation Date announced in plenary			
Rapporteur(s) Date appointed	Michael Gahler 6.6.2005		
Previous rapporteur(s)			
Simplified procedure Date of decision			
Legal basis disputed Date of JURI opinion			
Financial endowment amended Date of BUDG opinion			
European Economic and Social Committee consulted Date of decision in plenary			
Committee of the Regions consulted Date of decision in plenary			
Discussed in committee	21.6.2005		
Date adopted	13.7.2005		
Result of final vote	for: 27 against: 0 abstentions: 0		
Members present for the final vote	Alessandro Battilocchio, Margrietus van den Berg, Danutė Budreikaitė, Thierry Cornillet, Michael Gahler, Filip Andrzej Kaczmarek, Glenys Kinnock, Ģirts Valdis Kristovskis, Maria Martens, Miguel Angel Martínez Martínez, Luisa Morgantini, Toomas Savi, Pierre Schapira, Frithjof Schmidt, Felekna Uca, Anna Záborská, Jan Zahradil and Mauro Zani.		
Substitutes present for the final vote	Marie-Hélène Aubert, Milan Gaľa, Fiona Hall, Alain Hutchinson, Raymond Langendries, Bernard Lehideux, Manolis Mavrommatis, Britta Thomsen and Gabriele Zimmer.		
Substitutes under Rule 178(2) present for the final vote			
Date tabled – A6	18.7.2005 A6-0239/2005		
Comments	...		