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REPORT

on the proposal for a Council regulation concerning Community financial contributions to the International Fund for Ireland (2007-2010)
(COM(2006)0564 – C6-0423/2006 – 2006/0194(CNS))

Committee on Regional Development

Rapporteur: Jim Higgins

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 concerning Community financial contributions to the International Fund for Ireland (2007-2010)
(COM(2006)0564 – C6-0423/2006 – 2006/0194(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2006)564)¹,
 - having regard to Article 308 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0423/2006),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rules 51 and 35 of its Rules of Procedure,
 - having regard to the report of the Committee on Regional Development and the opinion of the Committee on Budgets (A6-0432/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Urges the Council, in considering the proposed change to the legal base of the Commission proposal, to avoid any delay in the allocation of the International Fund for Ireland;
 4. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

Amendment 1
Citation 1

Having regard to the Treaty establishing the European Community, and in particular **Article 308** thereof,

Having regard to the Treaty establishing the European Community, and in particular **Article 159** thereof,

(This amendment concerns the whole text. Adopting it will necessitate corresponding changes throughout).

Justification

There are serious doubts concerning the legal basis: the IFI aims at "promoting economic and social advance". The Regulation should therefore be based on Art 159 (cohesion). This is relevant as Art. 159 provides for a codecision procedure.

EXPLANATORY STATEMENT

Background

The European Community has contributed to the International Fund for Ireland (IFI) since 1989, three years after its establishment by an agreement between the governments of the United Kingdom and Ireland. At the end of 2006 EU support will represent approximately 57 % of annual contributions, making the Union the major donor to the Fund. The fund aims to contribute to the implementation of Article 10(a) of the Anglo-Irish Agreement of 15 November 1985 which provides that *"the two governments shall co-operate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years, and shall consider the possibility of securing international support for this work"*.

Two objectives are leading the work of the IFI; to promote economic and social advance and to encourage contact, dialogue and reconciliation between nationalists and unionists throughout Ireland.

As an instrument towards the goal of peace and reconciliation at grassroots level through economic and social development support, the IFI complements the action carried out by the EU programmes for Peace and Reconciliation in Northern Ireland and the Border Region of Ireland ("PEACE I" 1995-1999, "PEACE II" 2000-2006 and "PEACE III" 2007-2013).

The Board of the Fund is appointed jointly by the UK and Irish Governments and consists of a Chairman and six members which oversee the direction and operation of IFI. The Board is assisted by an Advisory Committee of officials appointed by the two Governments. The administration of the Fund is provided by a Secretariat, headed by Joint Directors General based in Belfast and Dublin. Where appropriate, Government Departments and public bodies act as administering agencies for the Fund, North and South. The Board is representative of the communities in both parts of Ireland and meets on average four times per year. The Commission has observer status at the Board, along with other donor countries (United States, Canada, New Zealand and Australia) and is represented at all Board meetings. Currently, the IFI's activities are carried out through various programmes and schemes which can be grouped under three headings: the regeneration of deprived areas, community capacity building and economic development. The IFI is today concentrating more on people-centred projects (approximately 30 % of its resources) such as education-related interventions.

A review by the Fund was performed in 2005, prompted by recognition that the current level of international support cannot be maintained indefinitely. Its structures and priorities were scrutinised in order to redefine its mission in light of the new realities. The review resulted in the adoption of a strategic framework, "Sharing this Space", which will bring an end to the life of the Fund in 2010. Hence, a final phase of activities of the Fund (2006-2010) was launched. The objectives of the IFI over the final five years include:

- building and realising the vision of a shared future for Northern Ireland and both parts of the island;

- promoting understanding between the different communities in Ireland;
- facilitating integration between the communities;
- building alliances with other agencies, ensuring the long term work of the IFI beyond 2010 and sharing the expertise with peace builders in other regions.

The programmes supported by the IFI will in the future be clustered around four themes: building foundations, building bridges, integrating communities and leaving a legacy.

The Commission proposal

The package of proposals for adoption includes:

- a proposal for a Council Regulation concerning Community financial contributions to the International Fund for Ireland (2007-2010);
- a Communication from the Commission on the Report on the International Fund for Ireland pursuant to Article 5 of Council Regulation (EC) No 177/2005.

In its proposal, the Commission notes that the final phase is meant to target the areas of greatest need and seek to ensure that its work is made sustainable in the longer term. The Commission proposes that EU contributions of € 15 million per year to the IFI continue for a further period of 4 years. The proposed new period will, therefore, end in 2010, thus terminating at the same time as the life of the Fund.

Furthermore, the Commission urges that the new Council Regulation should reflect the observations made in the Commission's report, in particular those reinforcing synergy of the objectives and co-ordination with Structural Funds interventions, especially with the new PEACE Programme and the provision on closure.

Assessment of the IFI

The assessment carried out in accordance with Article 5 of the current Council Regulation¹ governing the EU contribution to the IFI confirms the need for further support for activities, while continuing reinforcing synergy of objectives and co-ordination with Structural Funds interventions, in particular the PEACE programme.

The following presidency conclusion in reference to the IFI was adopted at the European Council's meeting on 15/16 December 2005:

The European Council noted the important work carried out by the International Fund for Ireland in promoting peace and reconciliation. It asked the Commission to take necessary steps with a view to continued EU support for the Fund as it enters the crucial final phase of its work up to 2010.

¹ Council Regulation (EC) No 177/2005 of 24 January 2005 on Community financial contributions to the International Fund for Ireland, OJ L 030, 03.02.2005.

Worth noting is also that the Financial Perspective ensured the continuation of the PEACE programme in Northern Ireland and the Border Counties of Ireland:

In recognition of the special effort for the peace process in Northern Ireland, a total of € 200 million will be allocated for the PEACE Programme for the period 2007-2013. This programme will be implemented in full respect of additionality of Structural Fund interventions.

The Commission's proposal is fully in accordance with this call and should be welcomed; however, as was the case concerning the previous Commission proposal to the Council¹, it is regrettable that it is being forwarded to the European Parliament at this late stage. Moreover, your rapporteur raises concerns that there remains a sense in the community, both North and South, that the Fund is a foremost US-supported organisation, despite the fact that the EU is the main donor. As recommended by the Parliament in its report of 10 December 2004², the Commission must, with regard to the implementation of the Regulation, make full use of Article 4 in co-operation of the Fund's Board, to determine appropriate publicity and information procedures in order to publicise the Community's contribution to the projects financed by the Fund. Your rapporteur believes that more can and must be done to address this matter and points out that the Commission has a duty to ensure that the contributions of the European tax payer are duly recognised.

Conclusion

The continuation of the Fund comes at a time when the British and Irish Governments have set definitive guidelines for the political parties in Northern Ireland to agree to proposals for the establishment of devolved institutions. There is increasing optimism that the current negotiations will lead to a power sharing executive.

Nevertheless, the political and social situation of the region remains fragile and the continuing level of violence and division push for sustained level of efforts from the EU to promote peace and reconciliation. Given that the IFI will be ending in 2010 any future Regulation covering EC contribution would have to ensure that appropriate arrangements were made for closure of the IFI, with regard to the principles of sound and effective financial management.

With the fullest respect of the need to continue the Community's financial contribution to the IFI, your rapporteur would urge that this proposal be rapidly approved, without amendment, so as to allow this Regulation to come into force on 1 January 2007.

¹ Proposal for a Council regulation concerning Community financial contributions to the International Fund for Ireland (2005-206) COM(2004)0632.

² A6-0071/2004 of 10.12.2004.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Gerardo Galeote
Chairman
Committee on Regional Development
BRUSSELS

Subject: Opinion on the legal basis of the proposal for a Council Regulation concerning Community financial contributions to the International Fund for Ireland (2007-2010)
(COM(2006)0564 final – 2006/0194(CNS))

Dear Mr Chairman,

By letter of 8 November 2006 and pursuant to Rule 35(3) of the Rules of Procedure, the Committee on Budgets requested the Committee on Legal Affairs, which I have the honour of chairing, to give an opinion on the most appropriate legal basis for the above-mentioned proposal.

At the first exchange of views held in the Committee on Budgets, the question was raised as to whether the proposed legal basis - Article 308 - ought not more properly to be replaced by Article 159 of the EC Treaty.

It is clear from settled case-law of the Court of Justice that the choice of legal basis is not in the discretion of the Community legislator but must be determined by objective factors which are amenable to judicial review¹, such as the aim and content of the measure in question². Furthermore, the decisive factor should be the main object of the measure³.

Moreover, the Court of Justice has stated that Article 308 of the EC Treaty is an appropriate legal basis only where no other article of the Treaty gives the Community its necessary powers⁴. Thus, before choosing this provision as a legal basis, the Community legislator must establish that there are no other Treaty provisions conferring the necessary powers for the proposed measure.

As clearly stated in recital 1, the objectives of the IFI are *"to promote economic and social advance and to encourage contact, dialogue and reconciliation between nationalists and unionists throughout Ireland"*.

¹ Case 45/86, *Commission v. Council* [1987] ECR 1439, para. 5.

² Case C-300/89, *Commission v. Council* [1991] ECR I-287, para. 10, and Case C-42/97, *European Parliament v. Council* [1999] ECR I-869, para. 36.

³ Case C-377/98, *Netherlands v. European Parliament and Council* [2001] ECR I-7079, para. 27.

⁴ Case C-45/86, *Commission v. Council* [1987] ECR 1493, para. 13.

In keeping with this approach, the aim of the proposed Regulation is set out in recital 10 (*"Assistance from the Fund should be regarded as effective only in so far as it brings about sustainable economic and social improvement and is not used as a substitute for other public or private expenditure"*) and in the third paragraph of Article 2 (*"The contribution shall be used in such a way as to bring about sustainable economic and social improvement in the areas concerned. It shall not be used as a substitute for other public and private expenditure"*).

The overall content of the proposal essentially consists in the allocation of the European Community's contribution to the International Fund for Ireland with a view to promoting economic and social advance of the areas of Northern Ireland concerned.

It follows from the above considerations that the aspects of the proposal concerning sustainable economic and social improvement are predominant and constitute the main, if not the sole, objective factors for determining the legal basis. Those factors point unequivocally to Article 159 of the EC Treaty as the only possible legal basis.

Furthermore, it must be borne in mind that the European Community's PEACE programme, which aims at the same goal as the IFI, has been set up within the activities financed by the Structural Funds (see Article 7(4) of the Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds: *"Under Objective 1, a PEACE programme in support of the peace process in Northern Ireland shall be established for the years 2000 to 2004 for the benefit of Northern Ireland and the border areas of Ireland"*¹).

This is indisputable evidence that instruments financed by the Structural Funds can aim at promoting inter-community peace and reconciliation and that, consequently, any other Community financial contribution pursuing the same objective - such as the contribution to the IFI - can fall within the remit of economic and social cohesion policy. As a result, the third paragraph of Article 159 of the EC Treaty proves the most appropriate legal basis for the proposal in question: indeed, that provision clearly refers to *"specific actions [which] prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Community policies"*. What is more, Article 159(3) makes the codecision procedure applicable to the relevant decision-making process, thus assigning a stronger role to the European Parliament.

On the other hand, this conclusion - namely the applicability of Article 159(3) - seems to be suggested by the very wording of the proposal under consideration: the second paragraph of Article 2 refers to the mission of the IFI as *"to complement the activities financed by the Structural Funds, and especially those of the PEACE programme"*, where this complementarity clearly evokes the same aim for both initiatives. In other terms, given that they have the same objectives, both the PEACE programme and the contribution to the IFI should have the same legal basis.

In addition, recital 9 (*"It is vital to ensure proper co-ordination between the activities of the Fund and those financed under the Community Structural Funds provided for by Article 159*

¹ OJ L 161, 26.06.1999, p. 1. In recognition of the special effort for the peace process, the PEACE programme has been allocated additional support from the Structural Funds for the period 2007 to 2013 pursuant to paragraph 22 of Annex II to Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25).

of the Treaty, in particular the PEACE programme") shows that, notwithstanding the choice of Article 308 as the legal basis for the proposal, the Commission probably had had Article 159 at the back of its mind.

Owing to the applicability of Article 159 of the EC Treaty as the most specific and appropriate legal basis, Article 308 is no longer relevant. As has been seen, Article 308 is applicable only when it is necessary "*in the course of the operation of the common market*", which is obviously not the case - at least not directly - when aiming at the promotion of inter-community peace and reconciliation. What is more, that provision provides only consultation of the European Parliament, along with a unanimous vote in the Council.

At its meeting of 20 November 2006, after hearing the Legal Service of the European Parliament and the representative of the European Commission, the Committee on Legal Affairs examined this question and decided unanimously that the third paragraph of Article 159 of the EC Treaty should be regarded as the only lawful legal basis for the abovementioned proposal¹.

Yours sincerely,

Giuseppe Gargani

¹ The following were present for the final vote: Giuseppe Gargani (chairman), Maria Berger, Carlo Casini, Rosa Díez González, Jean-Paul Gauzès, Manuel Medina Ortega, Gabriele Stauner, Jaroslav Zvěřina.

22.11.2006

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Regional Development

on the proposal for a Council regulation concerning Community financial contributions to the International Fund for Ireland (2007-2010)
(COM(2006)0564 – C6-0423/2006 – 2006/0194(CNS))

Draftsman: Janusz Lewandowski

SHORT JUSTIFICATION

Main elements of the Commission proposal

The International Fund for Ireland (IFI) was established in 1986 in order to contribute to the implementation of Article 10(a) of the Anglo-Irish Agreement of 15 November 1985. The objectives of the IFI are "*to promote economic and social advance and to encourage contact, dialogue and reconciliation between nationalists and unionists throughout Ireland*".

The European Union started to contribute to the IFI in 1989. EC funding now represents 48% of annual contributions to the Fund. For the period 2005 to 2006, EUR 15 million were committed from the Community budget for each of the years 2005 and 2006 in accordance with Council Regulation (EC) Nr. 177/2005 of 24 January 2005 on Community financial contributions to the International Fund for Ireland. The Regulation will expire on 31 December 2006.

The IFI complements the action carried out by the EU Programmes for Peace and Reconciliation in Northern Ireland and the Border Region of Ireland (PEACE I 1995-1999, PEACE II 2000-2006 and PEACE III 2007-2013). In 2005 the structures and priorities of the IFI have been reviewed; it has been decided that the fund will be brought to an end in 2010.

For this final period of activities of the Fund the Commission has now adopted a Proposal for a Regulation suggesting that EU contributions of €15 million per year to the International Fund for Ireland continue for a further period of 4 years, ending in 2010.

In the DB 2007 the Council has put 15 million in the reserve for the IFI.

Amendments proposed by the rapporteur:

* The aim of Amendment 2 is to change the legal basis: The proposal is based on Article 308 of the EC Treaty (which is a general article that is used if there is no other legal basis - consultation). However, there are serious doubts: the IFI aims at "promoting economic and social advance". Article 159 (cohesion), could therefore be a more adequate legal basis. This is relevant as Article 159 provides for a codecision procedure.

* Amendments 3-5 make sure that the Budgetary Authority is kept informed of the actual results and the implementation of the activities funded under this Regulation.

AMENDMENTS

The Committee on Budgets calls on the Committee on Regional Development, as the committee responsible, to incorporate the following amendments in its report:

Draft legislative resolution

Amendment 1 Paragraph 1 a (new)

1a. Considers that the financial envelope indicated in the legislative proposal must be compatible with the ceiling of heading 1b of the new multiannual financial framework (MFF) and points out that the annual amount will be decided within the annual budgetary procedure in accordance with the provisions of point 37 of the IIA of 17 May 2006;

Proposal for a regulation

Text proposed by the Commission¹

Amendments by Parliament

Amendment 2 Citation 1

Having regard to the Treaty establishing the European Community, and in particular Article **308** thereof,

Having regard to the Treaty establishing the European Community, and in particular Article **159** thereof,

¹ Not yet published in OJ.

Justification

There are serious doubts concerning the legal basis: the IFI aims at "promoting economic and social advance". The Regulation should therefore be based on Art 159 (cohesion). This is relevant as Art. 159 provides for a codecision procedure.

Amendment 3
Article 5 a (new)

Article 5a

By 31 March every year, the Commission shall submit a report to the Budgetary Authority, assessing the results of the activities of the Fund, taking into account developments in the peace process in Northern Ireland. That report shall incorporate, inter alia, the following:

(a) a survey of the Fund's activities;

(b) a list of projects which have received aid;

(c) an assessment of the nature and impact of the Fund's activities, notably in relation to its objectives and the criteria laid down in Articles 2 and 8;

(d) an assessment of action taken by the Fund to ensure cooperation and coordination with Structural Funds interventions, taking account, in particular, of obligations under Articles 3 and 4;

(e) an annex setting out the results of the verifications and controls carried out by the Commission pursuant to the undertaking referred to in Article 7.

Justification

This is part of the existing Regulation on the International Fund for Ireland. However, the

Commission has not included it in the new proposal. As the Commission's reporting obligations are vital for the Budgetary Authority, this article has to be reinstated.

Amendment 4

Article 6, paragraph 1, introductory phrase

By 30 June 2008 at the latest, the Fund shall submit to the Commission its strategy for the closure of the activities of the Fund, including:

By 30 June 2008 at the latest, the Fund shall submit to the Commission **and the Budgetary Authority** its strategy for the closure of the activities of the Fund, including:

Justification

The Budgetary Authority must be kept informed about the implementation and the strategy for the closure of the Fund.

Amendment 5

Article 9

A final report **should** be submitted to the Commission six months before the winding up date foreseen in the strategy for closure referred in point (a) of the first paragraph of Article 6 or six months after the last Community payment, whichever happens first, and **should** include all the necessary information that would enable the Commission to evaluate the implementation of the assistance and the attainment of the objectives.

A final report **shall** be submitted to the Commission **and the Budgetary Authority** six months before the winding up date foreseen in the strategy for closure referred in point (a) of the first paragraph of Article 6 or six months after the last Community payment, whichever happens first, and **shall** include all the necessary information that would enable the Commission to evaluate the implementation of the assistance and the attainment of the objectives.

Justification

The Budgetary Authority must be kept informed about the implementation and the strategy for the closure of the Fund.

PROCEDURE

Title	Proposal for a Council regulation concerning Community financial contributions to the International Fund for Ireland (2007-2010)
References	COM(2006)0564 – C6-0423/2006 – 2006/0194(CNS)
Committee responsible	REGI
Opinion by Date announced in plenary	BUDG 29.11.2006
Enhanced cooperation – date announced in plenary	0.0.0000
Drafts(wo)man Date appointed	Janusz Lewandowski 25.10.2006
Previous drafts(wo)man	
Discussed in committee	22.11.2006
Date adopted	22.11.2006
Result of final vote	+ : 24 - : 0 0 : 0
Members present for the final vote	Reimer Böge, Simon Busuttil, Markus Ferber, Salvador Garriga Polledo, Ingeborg Gräßle, Ville Itälä, Janusz Lewandowski, Antonis Samaras, László Surján, Herbert Bösch, Paulo Casaca, Bárbara Dührkop Dührkop, Szabolcs Fazakas, Louis Grech, Catherine Guy-Quint, Vladimír Maňka, Giovanni Pittella, Yannick Vaugrenard, Ralf Walter, Gérard Deprez, Nathalie Griesbeck, Anne E. Jensen, Jan Mulder, Kyösti Virrankoski.
Substitute(s) present for the final vote	
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	...

PROCEDURE

Title	Proposal for a Council regulation concerning Community financial contributions to the International Fund for Ireland (2007-2010)		
References	COM(2006)0564 – C6-0423/2006 – 2006/0194(CNS)		
Date of consulting Parliament	15.11.2006		
Committee responsible Date announced in plenary	REGI 29.11.2006		
Committee(s) asked for opinion(s) Date announced in plenary	BUDG 29.11.2006	JURI 29.11.2006	
Not delivering opinion(s) Date of decision			
Enhanced cooperation Date announced in plenary			
Rapporteur(s) Date appointed	Jim Higgins 6.11.2006		
Previous rapporteur(s)			
Simplified procedure – date of decision Date of decision			
Legal basis disputed Date of JURI opinion	BUDG 8.11.2006	/	JURI 20.11.2006
Financial endowment amended Date of BUDG opinion	BUDG 22.11.2006	/	
Parliament to consult European Economic and Social Committee – date decided in plenary			
Parliament to consult Committee of the Regions – date decided in plenary			
Discussed in committee	16.11.2006		
Date adopted	23.11.2006		
Result of final vote	+: 25 -: 2 0: 1		
Members present for the final vote	Stavros Arnautakis, Elspeth Attwooll, Jean Marie Beaupuy, Graham Booth, Bairbre de Brún, Gerardo Galeote, Eugenijus Gentvilas, Ambroise Guellec, Pedro Guerreiro, Gábor Harangozó, Konstantinos Hatzidakis, Jim Higgins, Mieczysław Edmund Janowski, Miloš Koterec, Constanze Angela Krehl, Miroslav Mikolášik, Jan Olbrycht, Markus Pieper, Bernard Poignant, Elisabeth Schroedter, Grażyna Staniszevska, Salvatore Tatarella, Vladimír Železný		
Substitute(s) present for the final vote	Jan Březina, László Surján, Marta Vincenzi		
Substitute(s) under Rule 178(2) present for the final vote	Hannu Takkula, Kyösti Virrankoski		
Date tabled	29.11.2006		
Comments (available in one language only)			