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8.6.2010

*****I**
REPORT

on 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 and Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide
(COM(2009)0194 – C7-0158/2009 – 2009/0060B(COD))

Committee on Foreign Affairs

Co-Rapporteurs: Kinga Gál and Barbara Lochbihler

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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on 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 and Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (COM(2009)0194 – C7-0158/2009 – 2009/0060B(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0194),
 - having regard to Article 251(2) and Articles 179(1) and 181a of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0158/2009),
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" (COM(2009)0665),
 - having regard to Article 294(3) and Articles 209(1) and 212 of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs (A7-0188/2009),
1. Adopts the position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

Amendment 1

Proposal for a regulation – amending act

Title

Text proposed by the Commission

amending Regulation (EC) **No 1905/2006 establishing a financing instrument for development cooperation and Regulation (EC) No 1889/2006** on establishing a

Amendment

amending Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide

financing instrument for the promotion of democracy and human rights worldwide

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

Justification

The amending proposal amended both Regulation (EC) No 1905/2006 and Regulation (EC) No 1889/2006, which fall into the competence of two difference committees within the European Parliament. It has therefore been requested that the proposal will be split into two different regulations, one for each financing instrument. References to Regulation (EC) No 1905/2006 are therefore deleted.

Amendment 2

Proposal for a regulation – amending act Recital 2

Text proposed by the Commission

(2) In implementing *these* Regulations inconsistencies have emerged regarding exceptions to the principle of non-eligibility for Community financing of costs related to taxes, duties and other charges. It is therefore proposed to amend the relevant provisions of **Regulations** (EC) **Nos 1905/2006 and 1889/2006** in order to align them **on** the other instruments.

Amendment

(2) In implementing *those* Regulations inconsistencies have emerged regarding exceptions to the principle of non-eligibility for Community financing of costs related to taxes, duties and other charges. It is therefore proposed to amend the relevant provisions of **Regulation** (EC) **No 1889/2006** in order to align them **to** the other instruments.

Justification

The amending proposal amended both Regulation (EC) No 1905/2006 and Regulation (EC) No 1889/2006, which fall into the competence of two difference committees within the European Parliament. It has therefore been requested that the proposal will be split into two different regulations, one for each financing instrument. References to Regulation (EC) No 1905/2006 are therefore deleted.

Amendment 3

Proposal for a regulation – amending act Article 1

Regulation (EC) No 1905/2006
Article 25 – paragraph 2

Text proposed by the Commission

Amendment

Article 1

deleted

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

"2. Community assistance shall not in principle be used for paying taxes, duties or charges in beneficiary countries."

Justification

The amending proposal amended both Regulation (EC) No 1905/2006 and Regulation (EC) No 1889/2006, which fall into the competence of two different committees within the European Parliament. It has therefore been requested that the proposal will be split into two different regulations, one for each financing instrument. References to Regulation (EC) No 1905/2006 are therefore deleted.

Amendment 4

Proposal for a regulation - amending act

Article 2 – point -1 (new)

Regulation (EC) No 1889/2006

Recital 23 a (new)

Text proposed by the Commission

Amendment

The following recital is inserted in Regulation (EC) No 1889/2006:

"(23a) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of strategy papers, as those strategy papers supplement Regulation (EC) No 1889/2006 and are of general application. It is of particular importance that the Commission carry out appropriate consultations during its

preparatory work, including at expert level."

Amendment 5

Proposal for a regulation - amending act

Article 2 – point -1 a (new)

Regulation (EC) No 1889/2006

Article 5 – paragraph 3

Text proposed by the Commission

Amendment

Article 5(3) of Regulation (EC) No 1889/2006 is replaced by the following:

"3. Strategy papers, and any revisions or extensions thereof, shall be adopted by the Commission in accordance with the procedure set out in Article 17a".

Justification

In the original report, the rapporteurs proposed to introduce the regulatory procedure with scrutiny (RPS) for the adoption of Strategy Papers under the EIDHR. As RPS no longer exists under the Lisbon Treaty, these amendments are withdrawn. In accordance with the mandate given by the Committee on Foreign Affairs on 3 December 2009, as well as on 28 April 2010, the rapporteurs now present new amendments introducing the procedure for delegated acts. As stipulated under Article 290 of the Lisbon Treaty on the power of delegation, these new amendments set out the objectives, content, scope and duration of the delegation of power, as well as the conditions to which the delegation is subject.

Amendment 6

Proposal for a regulation - amending act

Article 2 – point 1 a (new)

Regulation (EC) No 1889/2006

Article 17 a (new)

Text proposed by the Commission

Amendment

The following article is inserted in Regulation (EC) No 1889/2006:

"Article 17a

Exercise of the delegation

- 1. The power to adopt delegated acts as referred to in Article 5(3) shall be conferred on the Commission for the period of application of this Regulation.***
- 2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***
- 3. The power to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 17b and 17c."***

Justification

In the original report, the rapporteurs proposed to introduce the regulatory procedure with scrutiny (RPS) for the adoption of Strategy Papers under the EIDHR. As RPS no longer exists under the Lisbon Treaty, these amendments are withdrawn. In accordance with the mandate given by the Committee on Foreign Affairs on 3 December 2009, as well as on 28 April 2010, the rapporteurs now present new amendments introducing the procedure for delegated acts. As stipulated under Article 290 of the Lisbon Treaty on the power of delegation, these new amendments set out the objectives, content, scope and duration of the delegation of power, as well as the conditions to which the delegation is subject.

Amendment 7

Proposal for a regulation - amending act

Article 2 – point 1 b (new)

Regulation (EC) No 1889/2006

Article 17 b (new)

Text proposed by the Commission

Amendment

The following article is inserted in Regulation (EC) No 1889/2006:

"Article 17b

Revocation of the delegation

1. The delegation of power referred to in Article 5 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Justification

In the original report, the rapporteurs proposed to introduce the regulatory procedure with scrutiny (RPS) for the adoption of Strategy Papers under the EIDHR. As RPS no longer exists under the Lisbon Treaty, these amendments are withdrawn. In accordance with the mandate given by the Committee on Foreign Affairs on 3 December 2009, as well as on 28 April 2010, the rapporteurs now present new amendments introducing the procedure for delegated acts. As stipulated under Article 290 of the Lisbon Treaty on the power of delegation, these new amendments set out the objectives, content, scope and duration of the

delegation of power, as well as the conditions to which the delegation is subject.

Amendment 8

Proposal for a regulation

Article 2 – point 1 c (new)

Regulation (EC) No 1889/2006

Article 17 c (new)

Text proposed by the Commission

Amendment

***The following article is inserted in
Regulation (EC) No 1889/2006:***

"Article 17c

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification.

At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act."

Justification

In the original report, the rapporteurs proposed to introduce the regulatory procedure with scrutiny (RPS) for the adoption of Strategy Papers under the EIDHR. As RPS no longer exists under the Lisbon Treaty, these amendments are withdrawn. In accordance with the mandate given by the Committee on Foreign Affairs on 3 December 2009, as well as on 28 April 2010, the rapporteurs now present new amendments introducing the procedure for delegated acts. As stipulated under Article 290 of the Lisbon Treaty on the power of delegation, these new amendments set out the objectives, content, scope and duration of the delegation of power, as well as the conditions to which the delegation is subject.

EXPLANATORY STATEMENT

In its legislative proposal for the mid-term review of the Development Cooperation Instrument (DCI) and the European Instrument for Democracy and Human Rights (EIDHR), the Commission only proposes one technical amendment allowing costs related to taxes, duties and other charges related to the financing of actions under the DCI and EIDHR in beneficiary countries, to be financed from the budget of the instruments. So far, DCI and EIDHR have been the only financial instruments not to provide for an exception to the principle of the non-eligibility of such costs. The amendment will allow for the financing of these costs in exceptional circumstances, thus creating greater flexibility in the implementation of programmes and projects. For EIDHR projects, this is particularly important, given the special circumstances in which they are carried out. Governments might indeed be reluctant to grant exemptions for projects they do not support. The proposed amendment by the Commission should therefore be welcomed.

However, the amending proposal amended both Regulation (EC) No 1905/2006 and Regulation (EC) No 1889/2006, which fall into the competence of two different committees within the European Parliament. It has therefore been requested that the proposal will be split into two different regulations, one for each financing instrument and the first set of amendments is deleting references to Regulation (EC) No 1905/2006.

The second set of additional amendments proposed by your rapporteurs does not concern the substance or the priorities contained in the EIDHR, but the strengthening of Parliament's right of scrutiny.

Article 290 of the Treaty on the Functioning of the European Union has introduced the new procedure of Delegated Acts, which must be applied to implementing measures under co-decided acts which fulfil two criteria:

- the measures must be of a general scope;
- the measures must be designed to amend non-essential elements of the regulation, i.e. by deleting some of those elements or supplementing the instrument by the addition of new non-essential elements.

The Delegated Acts procedure significantly strengthens Parliament's powers: Parliament's veto right allows it to block a draft measure it objects against, and requires the Commission to present an amended proposal. In this sense, it is comparable to the Regulatory Procedure with Scrutiny under the former comitology procedure, which the rapporteurs first asked for, but which is no longer applicable under the Lisbon Treaty.

In our view, it is clear that the Strategy Papers under the EIDHR fully comply with the criteria for the application of the Delegated Acts procedure (art. 290 of the TFEU):

- they are of a *general scope* and have a long time scope (3-4 years);
- they *supplement* non essential elements of the legislative act by defining priority areas and objectives for the assistance given to a thematic area or region;
- they are *legally binding*, in the sense that, according to Article 6 of the EIDHR, annual action programmes shall be based on the strategy papers.

The delegated acts procedure would not, however, apply to Annual Action Programmes and Special Measures.

The Commission's legislative proposal for the mid-term review of the EIDHR constitutes an ideal occasion to ensure that the instrument complies with the new requirements laid down in the Treaty on the Functioning of the European Union.

PROCEDURE

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|---|---|-------------------------|----------|
| Title | Financing instrument for the promotion of democracy and human rights worldwide (amendment of Regulation (EC) No 1889/2006). | | |
| References | COM(2009)0194 – C7-0158/2009 – 2009/0060B(COD) | | |
| Date submitted to Parliament | 21.4.2009 | | |
| Committee responsible Date announced in plenary | AFET 17.9.2009 | | |
| Committee(s) asked for opinion(s) Date announced in plenary | DEVE 17.9.2009 | | |
| Not delivering opinions Date of decision | DEVE 6.10.2009 | | |
| Rapporteur(s) Date appointed | Barbara Lochbihler 22.10.2009 | Kinga Gál 22.10.2009 | |
| Discussed in committee | 3.12.2009 | 28.4.2010 | 1.6.2010 |
| Date adopted | 1.6.2010 | | |
| Result of final vote | +: 48 | –: 1 | 0: 4 |
| Members present for the final vote | Gabriele Albertini, Sir Robert Atkins, Michael Gahler, Marietta Giannakou, Andrzej Grzyb, Takis Hadjigeorgiou, Ioannis Kasoulides, Tunne Kelam, Nicole Kiil-Nielsen, Maria Eleni Koppa, Andrey Kovatchev, Wolfgang Kreissl-Dörfler, Eduard Kukan, Ryszard Antoni Legutko, Sabine Lösing, Ulrike Lunacek, Barry Madlener, Mario Mauro, Willy Meyer, Francisco José Millán Mon, Alexander Mirsky, María Muñoz De Urquiza, Annemie Neyts-Uyttebroeck, Raimon Obiols, Kristiina Ojuland, Ria Oomen-Ruijten, Pier Antonio Panzeri, Alojz Peterle, Mirosław Piotrowski, Bernd Posselt, Cristian Dan Preda, Fiorello Provera, José Ignacio Salafranca Sánchez-Neyra, Jacek Saryusz-Wolski, Werner Schulz, Ernst Strasser, Charles Tannock, Zoran Thaler, Inese Vaidere, Kristian Vigenin, Boris Zala | | |
| Substitute(s) present for the final vote | Elena Băsescu, Nikolaos Chountis, Hélène Flautre, Kinga Gál, Roberto Gualtieri, Judith Sargentini, Marietje Schaake, György Schöpflin, Alf Svensson, Renate Weber | | |
| Substitute(s) under Rule 187(2) present for the final vote | Jean-Paul Basset, Michèle Striffler | | |