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Committee on Development

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*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council
on the access to Community External Assistance
(COM(2004)0313 – C6-0032/2004 – 2004/0099(COD))

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 regulation of the European Parliament and of the Council on the access to Community External Assistance
(COM(2004)0313 – C6-0032/2004 – 2004/0099(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0313)¹,
 - having regard to Article 251(2) and Articles 175, 179, 181A, 203 and 308 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0032/2004),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Development and the opinions of the Committee on International Trade and the Committee on Foreign Affairs (A6-0000/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 6

(6) On 4 September 2003, a Resolution from the European Parliament on the untying of aid² 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 aid² 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**

¹ Not yet published in OJ.

² A5/2003/190, Bulletin/2003/9, 1.6.64

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 2

Recital 7

(7) Several elements need to be addressed 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. Specific provisions for the purposes of humanitarian aid are defined in Article 8.

(7) Several elements need to be addressed 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. Specific provisions for the purposes of humanitarian aid are defined in Article 8.

Amendment 3

Article 3, paragraph 2

(2) Participation in the award of procurement or grant contracts financed under a Community instrument with

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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.

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 4
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 5
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 be of any nationality. ***deleted***

Justification

Issue now regulated under new Article 4.1.a.

Amendment 6
Article 4, paragraph 1

(1) 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.

(1) 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 7
Article 4, paragraph 1 a new

(1a) All experts engaged by tenderers defined in Articles 3 and 6 can be of any nationality. This Article is without prejudice of the qualitative and financial requirements as set out in the Community's procurement rules.

Amendment 8
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 9
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,

(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.

consistency and proportionality of the aid provided by that donor, including its qualitative and quantitative nature.

Amendment 10
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 **run** for a minimum period of one year.

Amendment 11
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 LDCs as set out in Annex II** shall be automatically granted to the third countries listed in Annex III.

Amendment 12
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 13
Article 7, paragraph 1

¹ OJ L 184, 17.7.1999

(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 14
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 nationals of such third country or countries member of this regional organisation. The same rules apply for supplies, materials **and experts**.

Amendment 15
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***

Justification

Issue now regulated under revised Article 7 (1) and 7 (2).

Amendment 16
Article 7, paragraph 3 a (new)

(3a) As far as food aid operations are concerned, the application of this Article is limited to emergency operations.

Amendment 17
Article 8, title

Humanitarian aid

*Humanitarian aid **and** NGOS*

Amendment 18
Article 8, paragraph 1

(1) For the purposes of humanitarian aid, within the meaning of Council regulation (EC) N° 1257/96¹, the provisions of Article 3 herein shall not apply to the eligibility criteria established for the selection of grant beneficiaries.

(1) For the purpose of humanitarian aid, within the meaning of Council regulation (EC) N° 1257/96¹ ***and for the purpose of aid channelled directly through NGOs, within the meaning of Council regulation (EC) N°1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organisations (NGOs) in fields of interest to the developing countries***², the provisions of Article 3 herein shall not apply to the eligibility criteria established for the selection of grant beneficiaries.

Amendment 19
Article 8, paragraph 2

(2) Beneficiaries of these grants shall abide by the rules established in this regulation where the implementation of the assisted humanitarian action requires the award of procurement contracts.

(2) Beneficiaries of these grants shall abide by the rules established in this regulation where the implementation of the assisted humanitarian action ***and aid channelled directly through NGOs within the meaning of Council Regulation (EC) N°1658/98***, requires the award of procurement contracts.

Amendment 20

¹ OJ L 163, 2.7.1996.

² OJ L 213, 30.7.1998, p.1.

Article 9, title

Rapid Reaction Mechanism

deleted

Amendment 21
Article 9, paragraph 1

(1) For the purposes of civilian crisis management, within the meaning of Council Regulation (EC) No 381/20 creating a rapid-reaction mechanism¹, the partners eligible shall originate from any country. ***deleted***

Amendment 22
Article 9, paragraph 2

(2) The article 6(4)(b) of above mentioned Council Regulation (EC) No 381/2001 is replaced by the following: “have their main Headquarters in a Community Member States or in any other country” ***deleted***

Amendment 23
Article 9 a , title (new)

Article 9a

Respect for core principles and strengthening local markets

Amendment 24
Article 9 a, paragraph 1 (new)

(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.

¹ OJ, L 57/5, 27.2.2001

Amendment 25
Article 9 a, paragraph 2 (new)

(2) Tenderers that have been awarded contracts shall respect internationally agreed core labour and environmental 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.

Amendment 26
Article 10

10. This regulation amends and rules the relevant parts of all existing Community instruments listed in Annex I. The Commission shall amend Annexes II to IV of this Regulation from time to time to take account of any amendments to OECD texts.

10. This regulation amends and rules the relevant parts of all existing Community instruments listed in Annex I, ***as well as any future instruments with a thematic or geographical scope.*** The Commission shall amend Annexes II to IV of this Regulation from time to time to take account of any amendments to OECD texts.

EXPLANATORY STATEMENT

1. Context

The proposal is designed to further untie Community aid in areas covered by tendering procedures for goods and services for the purpose of external aid. 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 Commission 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 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

The Commission declares 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

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

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. Rules of eligibility (Article 3)

In opening access to EU external assistance (both procurement and grants) to actors of any nature on the exclusive basis of financial efficiency, the regulation disregards the added value in developmental terms of certain specific categories of actors with specific vocation in the development process ("non state actors" [NSA] - including NGOs). . The obligation of cofinancing compels the NGOs to work with civil society in order to raise the funds necessary for their part of the cofinancing and thus keeps development cooperation on the political agenda. Therefore, Regulation no 1658/98 on cofinancing operations with NGOs (Annex I, Part A, no. 10) should be the subject of the exemption clause, in the same way as this applies to e.g. humanitarian aid and the Rapid Reaction Mechanism.

This remark also applies to certain other actors with a specific emancipatory function in the development process (local communities, local universities and research centres...). The regulation should not be applicable to these aspects of their work, and subsidies for them should be withdrawn from the Annex to the regulation. However, it is clear that when these development actors compete in tenders for the procurement of goods and services that are not related to these aspects of their work, they must comply with the same rules as any other bidder.

It is also proposed that the Rapid Reaction Mechanism (RRM) be excluded from the scope of the proposed regulation. The RRM is designed to allow the Community to respond urgently to the needs of countries threatened with or undergoing severe political instability or suffering from the effects of a technological or natural disaster. The main added value of the RRM is its ability to provide support to the political strategy of the Commission faced with a crisis in a third country, and in this sense it is not an instrument with a specific development objective.

B. 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.

Untying of experts

In Article 3, § 5, and Article 7, § 3, the Commission proposes to unty the experts proposed by the tenderers. The question can be asked whether this proposal will lead to any added value in relation to the results achieved so far under the existing provisions.

C. 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.

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

In order to ensure compliance with the developmental objectives of e.g. the regulation on food-aid and food-aid management (Regulation (EC) no. 1292/96 of 27.06.1996 - see annex I, part A, no. (14)), this article should be completed 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.