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*Committee on Development*

**2008/2117(INI)**

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## **DRAFT REPORT**

with recommendations to the Commission on financing of actions other than  
Official Development Assistance in countries falling under Regulation (EC)  
No 1905/2006  
(2008/2117(INI))

Committee on Development

Rapporteur: Thijs Berman

(Initiative – Rule 39 of the Rules of Procedure)

Rapporteur for opinion(\*):  
....., Committee on Foreign Affairs

(\* Associated committee – Rule 47 of the Rules of Procedure)

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with recommendations to the Commission on financing of actions other than Official Development Assistance in countries falling under Regulation (EC) No 1905/2006 (2008/2117(INI))**

*The European Parliament,*

- having regard to Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation<sup>1</sup>,
- having regard to its resolution of 15 February 2007 on the draft Commission decisions establishing Country Strategy Papers and Indicative Programmes for Malaysia, Brazil and Pakistan<sup>2</sup>,
- having regard to its resolution of 7 June 2007 on the draft Commission decision establishing Regional Strategy Papers and Regional Indicative Programmes for Mercosur and Latin America<sup>3</sup>,
- having regard to its resolution of 21 June 2007 on the draft Commission decision establishing a Regional Strategy Document 2007-2013 and a Multiannual Indicative Programme for Asia<sup>4</sup>,
- having regard to its resolution of 25 October 2007 on the draft Commission decision establishing a Special Measure 2007 for Iraq<sup>5</sup>,
- having regard to its resolution of 9 July 2008 on the draft Commission decisions establishing Annual Action Programmes for Brazil for 2008 and for Argentina for 2008<sup>6</sup>,
- having regard to the judgment of the Court of Justice of 23 October 2007 in case C-403/05 *Parliament v Commission*<sup>7</sup>,
- having regard to budget line 19 09 02 "Preparatory action – Cooperation with middle income group countries in Latin America", general budget of the European Union for the financial year 2008<sup>8</sup>,
- having regard to budget line 19 10 01 03 "Preparatory action – Business and scientific exchanges with India", general budget of the European Union for the financial year 2008<sup>9</sup>,

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<sup>1</sup> OJ L 378, 27.12.2006, p. 41.

<sup>2</sup> OJ C 287 E, 29.11.2007, p. 507.

<sup>3</sup> OJ C 125 E, 22.5.2008, p. 213.

<sup>4</sup> OJ C 146 E, 12.6.2008, p. 337.

<sup>5</sup> Texts adopted, P6\_TA(2007)0481.

<sup>6</sup> Texts adopted, P6\_TA(2008)0338.

<sup>7</sup> [2007] ECR I-9045.

<sup>8</sup> OJ L 71, 14.3.2008, p. II/781.

<sup>9</sup> OJ L 71, 14.3.2008, p. II/787.

- having regard to budget line 19 10 01 04 "Preparatory action – Business and scientific exchanges with China", general budget of the European Union for the financial year 2008<sup>1</sup>,
  - having regard to budget line 19 10 01 05 "Preparatory action – Cooperation with middle income group countries in Asia", general budget of the European Union for the financial year 2008<sup>2</sup>,
  - having regard to Article 192, second paragraph, of the EC Treaty,
  - having regard to Rules 39 and 45 of its Rules of Procedure,
  - having regard to the report of the Committee on Development (A6-0000/2008),
- A. whereas the primary and overarching objective of Regulation (EC) No 1905/2006 of the European Parliament and of the Council establishing a financing instrument for development cooperation (DCI) is the eradication of poverty in partner countries and regions in the context of sustainable development,
- B. whereas all measures included in DCI geographic programmes, and measures accounting for 90% of expenditure under DCI thematic programmes, must be designed so as to fulfil the criteria for Official Development Assistance (ODA) established by the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD/DAC)<sup>3</sup>,
- C. whereas the primary requirement for ODA classification is that each transaction "is administered with the promotion of the economic development and welfare of developing countries as its main objective"<sup>4</sup>,
- D. whereas, during 2007, Parliament adopted four resolutions under Rule 81 to draw attention to seven DCI programmes containing actions that do not meet the requirements for ODA classification,
- E. whereas some DCI-financed actions under the Erasmus Mundus programme, specifically those allowing for EU nationals to study at third country universities, do not meet the requirements for ODA classification,
- F. whereas it may be desirable for the Community to undertake in developing countries actions to promote knowledge of the EU, or to improve mutual understanding between nations or regions, or to respond to the strategic interests of the EU, even though such actions would not meet the requirements for ODA classification,
- G. whereas four preparatory actions for non-ODA measures in DCI countries, costing a total

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<sup>1</sup> OJ L 71, 14.3.2008, p. II/788.

<sup>2</sup> OJ L 71, 14.3.2008, p. II/788.

<sup>3</sup> See Article 2(4) of Regulation (EC) No 1905/2006.

<sup>4</sup> OECD/DAC Factsheet "Is it ODA?", October 2006.

of EUR 13,5 million, are included in the Community budget for 2008<sup>1</sup>,

1. Requests the Commission to submit to Parliament within six months of the date of adoption of this resolution, on the basis of Article 308 of the EC Treaty, a legislative proposal for one of the following:
  - a financing instrument for actions other than Official Development Assistance in countries falling under Regulation (EC) No 1905/2006;
  - amendments to Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories to extend its application to countries falling under Regulation (EC) No 1905/2006;
2. Requests that the legislative proposal follow the recommendations set out in the annex to this resolution;
3. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;
4. Considers that the necessary financing for the instrument may be drawn from budget lines 19 09 02, 19 10 01 03, 19 10 01 04 and 19 10 01 05 and supplemented if necessary by additional funds from the Heading 4 margin for the remaining years of the Multiannual Financial Framework;
5. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council.

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<sup>1</sup> Budget lines 19 09 02, 19 10 01 03, 19 10 01 04 and 19 10 01 05.

## **ANNEX TO THE MOTION FOR A RESOLUTION: DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED**

Parliament recommends that the following aspects be included in the requested proposal:

### **1. Objective, scope and general principles**

The proposal should allow for Community financing in the form of economic, financial and technical cooperation, and other forms of cooperation falling within its spheres of competence, not fulfilling the criteria for classification as Official Development Assistance as established by the OECD/DAC with the countries listed in Annex I of Regulation (EC) No 1905/2006.

The objective of the cooperation covered by the proposal should be to provide a specific response to the need to strengthen links and to engage further with the countries concerned on a bilateral, regional or multilateral basis in order to create a more favourable environment for the development of the relations of the Community with those countries and territories and to promote dialogue while fostering the Community's interests.

The cooperation covered by the proposal should be aimed at engaging with partners which fulfil one or more of the following criteria:

- they share similar political, economic and institutional structures and values to the Community or are open to the promotion of such structures and values;
- they are important bilateral partners and players in multilateral fora and in global governance;
- they are countries with which the Community has a strategic interest in promoting links.

The proposal, and measures covered by it, should aim to ensure coherence with other areas of the Community's external action as well as other relevant Community policies and instruments. They should complement and bring added value to the efforts undertaken by Member States and Community public bodies, including in the area of commercial relations.

The Regulation resulting from the proposal should have a period of validity ending in 2013 and be subject to a mid-term review leading to a legislative proposal for any necessary modifications at the instigation of the European Parliament, the Commission or the Council.

### **2. Areas of Cooperation**

The proposal should allow for actions consistent with its objective, scope and general principles, specifically in the following areas of cooperation:

- (1) the promotion, for mutual or Community benefit, of cooperation, partnerships and joint undertakings between economic, academic and scientific actors in the Community and

partner countries;

- (2) the stimulation, for mutual or Community benefit, of bilateral trade, investment flows and economic partnerships;
- (3) the promotion, for mutual or Community benefit, of dialogues between political, economic and social actors and other governmental and non-governmental organisations in relevant sectors in the Community and partner countries;
- (4) the promotion, for mutual or Community benefit, of people-to-people links, education and training programmes and intellectual exchanges and the enhancement of mutual understanding between cultures and civilisations;
- (5) the promotion of cooperative projects in areas such as research, science and technology, energy, transport and environmental matters – including climate change, customs and financial issues and any other matter of mutual interest between the Community and the partner countries;
- (6) the enhancement of awareness and understanding of the European Union and of its visibility in partner countries;
- (7) support for specific initiatives, including research work, studies, pilot schemes or joint projects designed to respond in an effective and flexible manner to cooperation objectives arising from developments in the Community's bilateral relationship with the partner countries or aiming to provide impetus to the further deepening and broadening of bilateral relationships with them.

Provision should be made for extension of the list of areas of cooperation by means of management procedures under Regulation (EC, Euratom) No 1605/2002.

### **3. Programming and implementation**

The proposal should allow for programming to be carried out by means of multi-annual programming documents. The programme should be implemented by more detailed "action programmes" including a detailed description of the actions to be financed and covering a period of not less than one year and not more than three years.

### **4. Eligibility, types of financing and co-financing**

The proposal should contain lists of entities eligible for funding and co-financing and lay down rules as to the legal forms in which such funding or co-financing may be implemented. Provision should be made for those lists to be extended by means of management procedures under Regulation (EC, Euratom) No 1605/2002.

### **5. Management committee, evaluation and annual reporting**

The proposal should include provisions for the adoption of programming documents and action programmes by management committee, along with requirements for evaluation and

annual reporting which are analogous to those included in other external actions financing instruments.



## **EXPLANATORY STATEMENT**

The need for this Legislative Own-Initiative Report stems from the work carried out by the Committee on Development in recent years on the Development Cooperation Instrument (DCI).

### **Limited scope of DCI**

During the protracted and difficult codecision legislative procedure for DCI, the European Parliament succeeded in inserting provisions to maintain the character of the Regulation as an instrument for development policy. Particularly, these were the requirements<sup>1</sup> that 100% of funding for geographic programmes and 90% of funding for thematic programmes should be "designed so as to fulfil the criteria for Official Development Assistance (ODA) established by the OECD/DAC [Development Assistance Committee of the OECD]".

### **Supervising DCI implementation**

When DCI entered into force at the beginning for 2007, the Committee on Development proceeded to examine all the Country, Regional and Thematic Strategy Papers, and subsequently all the Annual Action Programmes drawn up under the Strategy Papers. As well as issuing political comments on the contents of these programming documents, the Committee considered the legal question of whether any of the measures proposed in the documents fell outside the OECD/DAC definition of ODA. On the occasions when the Committee took the view that this requirement was not being respected, it forwarded to Plenary a resolution under Rule 81 to signal its view that the draft measure exceeded the implementing powers provided for in DCI<sup>2</sup>. Four such resolutions, covering six geographical Strategy Papers and a Special Measure (for Iraq), were adopted in 2007. One further resolution, covering two geographical Annual Action Programmes, was adopted in 2008.

The measures highlighted in the resolutions included:

- an action 'to increase EU market knowledge for the Malaysian business community and vice versa' and 'to raise EU visibility in Malaysia through joint initiatives';
- the establishment of a European Studies Institute in Brazil, with the main purpose of 'raising the EU's profile';
- a measure 'to enhance knowledge and consciousness of regional identity and the integration process in Mercosur through support for the cinematographic and audiovisual sector'
- support for 'possible ASEAN-EU Free Trade Agreement negotiations and implementation' and raising 'the visibility of EC contribution to ASEAN';

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<sup>1</sup> Included in Article 2, paragraph 4 of Regulation (EC) No 1905/2006 of 18 December 2006 establishing a financing instrument for development cooperation ("DCI").

<sup>2</sup> Provided for in Article 8 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ("Comitology Decision")

- financing the movement of students holding EU nationality to study in developing countries under the Erasmus Mundus programme.

In forwarding these resolutions to plenary, the Committee on Development limited itself to comparing the proposed measures with the provisions of the legal basis; it did not in any way suggest that it was opposed to such measures being carried out, if they could be financed from a source that was not dedicated to the purpose of development. On the contrary, a good political case may be made for financing such measures from the Community budget, especially in countries and regions which have already reached a level of development at which commercial and other interests predominate over the provision of basic necessities.

### **Legislative gap**

With DCI being limited to development actions and no other financing instrument available to cover non-emergency actions of this sort, it is clear that there is a gap in the legislative architecture for financing external actions. The purpose of this Legislative Initiative Report is to call for a legislative proposal aimed at filling this gap.

### **Budgetary provisions**

In the interim, the Committee on Development made provision, in its opinions on the budgets for 2008 and 2009, for Preparatory Actions to finance actions in middle-income countries which fell outside the official definition of ODA, and hence outside the scope of DCI<sup>1</sup>. For 2009, the Committee proposed to extend this funding to developing countries other than middle-income countries, in view of the limited number of middle-income countries in the Asian region. In 2008, the budget also included Preparatory Actions for "business and scientific exchanges with India and China<sup>2</sup>", which also help to fill the legislative gap. Since budget-lines for Preparatory Actions are intended to pave the way for legislation, it is appropriate for the Committee on Development now to call for the corresponding legislation.

### **Purpose of the Requested Legislation**

Measures intended to be covered by the requested legislation include those proposed under DCI which Parliament, in its Rule 81 Resolutions in 2007 and 2008, considered to be outside the definition of ODA. However, it would not be helpful to restrict the scope of the legislation to such actions, since it may at some time be useful to support other non-ODA activities in the developing countries concerned. For this reason, there is a broad list of possible areas of cooperation included in the annex to the motion for a resolution proposed by your rapporteur. There is also provision for the list to be extended by comitology, should this become necessary.

### **Geographical scope**

It is suggested to limit the geographical scope of the requested legislation to those countries

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<sup>1</sup> Budget-lines 19 09 02 and 19 10 01 05

<sup>2</sup> Budget-lines 19 10 01 03 and 19 10 01 04

covered by DCI. The dangers of restricting the application to certain categories of developing country - such as middle-income countries - have already been highlighted by the difficulties in applying the budget-line for this purpose in Asia. Furthermore, it is not necessary to extend the scope beyond DCI countries because it is only DCI which includes the requirement for actions to fall within the definition of ODA: for this reason, the countries covered by other geographical financing instruments<sup>1</sup> need not be brought within the application of the requested new legislation.

## **Legal base**

Under Rule 39, a Legislative Initiative Report is required to indicate the appropriate legal base for the legislation requested. However, in this case the selection of legal base is not straightforward. Since the measures covered are specifically not ODA, the development legal base of Article 179 is not appropriate. The possible alternative, Article 181a for "Economic, Financial and Technical Cooperation with Third Countries" has been subject to different interpretations in Parliament and the Commission, with Parliament arguing that its application is restricted to non-developing countries. This view was shared in an Opinion of an Advocate-General at the Court of Justice<sup>2</sup>.

Given the difficulties over identifying the legal base, your rapporteur has asked the Chairman of the Committee on Development to request a verification of the legal base under Rule 35. He proposes to follow the advice provided by the Committee on Legal Affairs in response to this request.

## **Choice of alternative forms**

The objective of filling the gap in the legislative architecture may be achieved in two possible ways:

- A new regulation may be adopted to provide specifically for non-ODA actions in countries covered by DCI
- Amendments may be presented to bring non-ODA actions in DCI countries within the scope of an existing legislative instrument.

In the view of your rapporteur, these options are equally acceptable, as long as there is no attempt to bring these actions under DCI itself, which would compromise the development character of this Regulation. If the route of amendments is chosen, he suggests extending the scope of the Industrialised Countries Instrument<sup>3</sup>: this legislation is already designed to serve almost exactly the non-ODA purposes required, so the problem of the legislative gap may be solved by applying its provisions to DCI countries.

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<sup>1</sup> Including Regulation (EC) No 1638/2006 of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument and the ACP-EU Partnership Agreement.

<sup>2</sup> Opinion of Advocate-General Paolo Mengozzi of 19 September 2007 in Case C-91/05

<sup>3</sup> Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories