

Basic information	
<p>2009/0060A(COD)</p> <p>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation</p>	Procedure completed
<p>External actions: financing instrument for development cooperation</p> <p>Amending Regulation (EC) No 1905/2006 2004/0220(COD) See also 2009/0059(COD) See also 2009/0060B(COD) See also 2010/0059(COD)</p> <p>Subject</p> <p>6.30 Development cooperation 6.30.02 Financial and technical cooperation and assistance</p>	

Key players					
European Parliament	Committee responsible		Rapporteur	Appointed	
	CODE Parliament delegation to Conciliation Committee		MITCHELL Gay (PPE)	15/02/2011	
	Former committee responsible		Former rapporteur	Appointed	
	DEVE Development		MITCHELL Gay (PPE)	25/01/2011	
	DEVE Development		MITCHELL Gay (PPE)	06/10/2009	
	Former committee for opinion		Former rapporteur for opinion	Appointed	
	AFET Foreign Affairs		The committee decided not to give an opinion.		
	INTA International Trade		The committee decided not to give an opinion.		
	Council of the European Union	Council configuration		Meetings	Date
		Competitiveness (Internal Market, Industry, Research and Space)		3057	2010-12-10
Agriculture and Fisheries		3108	2011-07-19		
Education, Youth, Culture and Sport		3128	2011-11-28		
European	Commission DG		Commissioner		

Commission	External Relations	ASHTON Catherine

Key events			
Date	Event	Reference	Summary
21/04/2009	Legislative proposal published	COM(2009)0194 	Summary
17/09/2009	Committee referral announced in Parliament, 1st reading		
23/11/2009	Vote in committee, 1st reading		Summary
01/12/2009	Committee report tabled for plenary, 1st reading	A7-0078/2009	
20/10/2010	Debate in Parliament		
21/10/2010	Decision by Parliament, 1st reading	T7-0379/2010	Summary
21/10/2010	Results of vote in Parliament		
10/12/2010	Council position published	16442/1/2010	Summary
16/12/2010	Committee referral announced in Parliament, 2nd reading		
26/01/2011	Vote in committee, 2nd reading		Summary
27/01/2011	Committee recommendation tabled for plenary, 2nd reading	A7-0006/2011	
03/02/2011	Decision by Parliament, 2nd reading	T7-0032/2011	Summary
03/02/2011	Debate in Parliament		
19/07/2011	Parliament's amendments rejected by Council		
06/09/2011	Formal meeting of Conciliation Committee		
31/10/2011	Final decision by Conciliation Committee		
31/10/2011	Joint text approved by Conciliation Committee co-chairs	00057/2011	
24/11/2011	Report tabled for plenary, 3rd reading	A7-0402/2011	
28/11/2011	Decision by Council, 3rd reading		
30/11/2011	Debate in Parliament		
01/12/2011	Decision by Parliament, 3rd reading	T7-0535/2011	Summary
13/12/2011	Final act signed		
13/12/2011	End of procedure in Parliament		
30/12/2011	Final act published in Official Journal		

Technical information	
Procedure reference	2009/0060A(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation

Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 1905/2006 2004/0220(COD) See also 2009/0059(COD) See also 2009/0060B(COD) See also 2010/0059(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 209-p1 Treaty on the Functioning of the European Union TFEU 212
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	CODE/7/05310

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Amendments tabled in committee		PE430.669	12/11/2009	
Committee report tabled for plenary, 1st reading/single reading		A7-0078/2009	01/12/2009	
Committee draft report		PE430.436	21/05/2010	
Amendments tabled in committee		PE442.857	28/05/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0379/2010	21/10/2010	Summary
Committee draft report		PE456.652	17/01/2011	
Committee recommendation tabled for plenary, 2nd reading		A7-0006/2011	27/01/2011	
Text adopted by Parliament, 2nd reading		T7-0032/2011	03/02/2011	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A7-0402/2011	24/11/2011	
Text adopted by Parliament, 3rd reading		T7-0535/2011	01/12/2011	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	16442/1/2010	10/12/2010	Summary
Draft final act	00057/2011/LEX	13/12/2011	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2009)0194 	21/04/2009	Summary
Commission communication on Council's position	COM(2010)0788 	13/12/2010	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2011)0178 	01/04/2011	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CSL/EP	Joint text approved by Conciliation Committee co-chairs	00057/2011	31/10/2011	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

[Regulation 2011/1339](#)
[OJ L 347 30.12.2011, p. 0030](#)

[Summary](#)

External actions: financing instrument for development cooperation

2009/0060A(COD) - 01/04/2011 - Commission opinion on Parliament's position at 2nd reading

Pursuant to Article 294(7) (c) of the Treaty on the Functioning of the European Union, the European Commission delivers an opinion on the amendments proposed by the European Parliament at second reading in relation to the Council's position regarding 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.

In its opinion, **the Commission indicates that it is unable to accept the amendments relating to delegating actions and comitology issues.**

The discussions with the co-legislators shall continue after the second reading, in order to work on a consensual solution preferably **giving substantive scrutiny rights to the European Parliament** for the remainder of the current Multiannual Programming Period and leaving options open for the next one, including the possibility of having recourse to delegated acts while fully respecting the criteria established in Article 290 TFEU.

External actions: financing instrument for development cooperation

2009/0060A(COD) - 21/10/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 583 votes to 6, with 19 abstentions, a 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.

The Parliament adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) amending the Commission's proposal as follows:

Splitting of the proposal: the European Commission had proposed an amendment that is identical in both Regulation (EC) No 1905/2006 (DCI Regulation) and Regulation (EC) No 1889/2006 (EIDHR Regulation). Parliament called for the Commission's proposal to be split into two distinct legislative proposals (COD/2009/0060A et [COD/2009/0060B](#)), one for each financial instrument. This is why the plenary proposes a series of amendments that delete references to Regulation (EC) No 1889/2006 in relation to the present proposal.

Delegated acts: following the entry into force of the Lisbon Treaty, the European Parliament co-decides with the Council on virtually all legislation. This needs to be reflected in the area of the implementation of external cooperation financial instruments. As a result, strategy documents, annual action programmes, as well as their revisions or extensions, have to be adopted by means of delegated acts, giving the European Parliament a *de facto* right of veto, permitting it to require that the Commission presents amended proposals. A new comitology procedure has been established for this purpose (Article 35(1), (2) and (3)).

Informing Parliament about actions the cost of which exceeds a certain amount: the plenary asks that where the cost of a measure is equal to or exceeds EUR 10 000 000, the Commission shall adopt it taking into account the opinions of the European Parliament and of the Council. However, for

Special Measures costing below EUR 10 000 000, the Commission shall send the measures to the European Parliament and to the Council for information within 10 working days of adopting its decision. Changes are also made with a view to informing Parliament of eventual amendments (and of limited scope) to Special Measures funded under the Regulation. For the allocation of large amounts among beneficiaries of the Regulation (in particular beneficiaries of the Sugar Protocol), the Commission shall take its decision by means of a delegated act.

Follow-up: Parliament asks that the Commission should regularly monitor and review its programmes, and evaluate the results of the implementation of geographical and thematic policies and programmes, and of sectoral policies, as well as the effectiveness of programming, where appropriate by means of independent external evaluations. Proposals by the European Parliament, the national parliaments or the Council for independent external evaluations will be taken into due account. Particular attention shall be given to social sectors and to progress made towards achieving the Millennium Development Goals.

Evaluation: the Commission shall send its evaluation reports to the European Parliament and to the Council for information. The results shall feed back into programme design and resource allocation.

Report: the Commission shall examine the progress made in implementing the measures taken under this Regulation and shall submit to the European Parliament and the Council an annual report on the implementation and the results and, as far as possible, on the main outcomes and impacts of the assistance.

External actions: financing instrument for development cooperation

2009/0060A(COD) - 13/12/2010 - Commission communication on Council's position

In its communication to the European Parliament concerning the Council position on the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation (original Commission proposal 'taxes amendment', the Commission can accept the Council position which is in line with the Commission's initial proposal and with the European Parliament's first reading, with the exception of the specific issues mentioned below.

Main characteristics of the Council position: the Council position reflects the following key elements:

- **taxes and duties:** the wording "in principle" is added to the non-eligibility of taxes, duties and other charges, thus signalling the possibility of exceptions, these being regulated internally by the instructions given to Authorising Officers;
- **split into two separate acts:** one for the DCI and one for the EIDHR. The Commission initially proposed one act making the same amendment to both instruments. The equivalent amendment of DCI (adding "in principle") is now incorporated in the Council position on COM (2010) 102 final – [2010/0059 COD](#) (which is the amendment of DCI to include bananas accompanying measures).

Amendments by Parliament not acceptable to Council:

- **delegated acts (Article 290 TFEU):** Parliament seeks by its first reading amendments to apply this procedure to the adoption of multiannual strategy papers by the Commission. Despite long and intensive negotiations (notably trilogues held on 2 February, 23 March and 20 October) it was not possible to reach agreement on this issue. The Council has not accepted these amendments in its positions at first reading. The Commission is ready to continue efforts to reconcile the positions of the institutions and to find ways to meet the substantive concerns behind Parliament's amendments, in particular in ensuring that Parliament can exercise appropriate oversight over the formulation of external cooperation strategies and the proper implementation of external financial instruments;
- **national Parliaments:** Parliament also adopted amendments introducing references to national parliaments which Council has not accepted. The Commission considers that the main concern behind Parliament's amendments, to ensure that national parliaments may involve themselves in monitoring and evaluating the implementation of the instrument, is covered by existing provisions concerning national parliaments, notably the protocols to the Treaty on Functioning of the EU (TFEU).

The Commission can accept the Council position at first reading.

External actions: financing instrument for development cooperation

2009/0060A(COD) - 21/04/2009 - Legislative proposal

PURPOSE: to amend Regulation (EC) No 1905/2006 establishing an instrument for development cooperation (DCI) in order to provide, on a case by case basis, eligibility of taxes for Community financing.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

CONTENT: the various Community financial instruments for external cooperation contain inconsistencies regarding the **eligibility for Community financing of costs related to taxes, duties and other charges**.

The Development Cooperation Instrument (DCI) and the European Instrument for Democracy and Human Rights (EIDHR) are the only ones not to provide for an exception to the principle of the non-eligibility of such costs for funding. The other instruments lay down that Community support may not be used to finance these costs in principle. They therefore allow for flexibility on a case-by-case basis and the authorising officer responsible may, where appropriate, decide to accept their being financed in the interests of proper implementation of programmes and projects.

Such **flexibility is essential** for certain recurring situations where deadlock occurs because exemption mechanisms are absent or impractical (owing, for example, to the extreme complexity of procedures in the beneficiary country). In these situations, the rigid formulation of the DCI and EIDHR instruments may make the action financed by external aid extremely difficult.

Note also that with the current wording the prohibition on financing for the payment of taxes concerns only those paid "in beneficiary countries", which adds difficulty of interpretation to the problem of eligibility (especially in the case of regional projects). Another example is the levying of local taxes (equivalent to VAT) which cannot be recovered because of a lack of machinery for relief and then have to be borne by the contractor because of the strict prohibition on covering taxes.

In view of the above and of the evolving nature of tax rules in the beneficiary countries, it is essential to preserve sufficient flexibility to enable authorising officers to determine, on a case-by-case basis, whether there is need to accept the eligibility of taxes for Community financing under the EIDHR and DCI, as they may do for other instruments of EC external assistance, where such taxes are lawful.

Therefore it is proposed to align the relevant provisions of both these instruments as a consequence.

It should be noted that for reasons of a legal nature, it is provided that the European Parliament should give a separate opinion on this proposal amending the DCI and on the parallel proposal [amending the EIDHR](#).

External actions: financing instrument for development cooperation

2009/0060A(COD) - 10/12/2010 - Council position

The Council adopted its position at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation (DCI).

In its position, the Council recalls that the Development Cooperation Instrument (DCI) is one of only two EU financial instruments for external action not providing for an exception to the principle of the non-eligibility for EU funding of costs related to taxes, duties and other charges. The instrument for the promotion of democracy and human rights worldwide (EIDHR) is the other case in point. All the other EU financial instruments for external action lay down that EU support may not be used to finance such costs in principle, thus allowing for flexibility on a case-by-case basis, where appropriate, in the interests of proper implementation of programmes and projects.

The objective of the Commission proposal is to align the relevant provision of this instrument on the other instruments, by adding the words "in principle" in Article 25, paragraph 2 of the Regulation.

European Parliament amendments: the Council had no difficulties whatsoever with the single change suggested by the Commission in its initial proposal with a view to harmonise relevant provisions in existing financial instruments.

The Council also accepted three rather technical amendments adopted by the European Parliament, for the sake of clarity and accuracy. In particular, **the Council agreed to the splitting of the initial proposal into two in order to reflect that two distinct instruments were concerned**, the modification of the financial instrument of the Development Cooperation Instrument (DCI) and [the modification of the financing instrument for the promotion of democracy and human rights worldwide](#).

The Council has not been able, however, to accept those amendments adopted by the European Parliament which introduce the application of the delegated acts procedure (Article 290 TFEU) for the adoption of multi-annual cooperation programmes and strategy papers. The Council believes that the multi-annual cooperation programmes, not being legally binding acts, do not constitute acts of general application, supplementing or amending the basic act. They constitute implementing measures within the meaning of Article 291 TFEU.

In conclusion, while the proposal of the Commission did not present any difficulty to the Council, the Council accepted a number of amendments adopted by the European Parliament. The Council considers that its position at first reading is a balanced compromise and calls on the European Parliament to go along with this text in order to preserve the spirit and objective of the initial proposal, i.e. to ensure the consistency of the EU financial instruments for external action and to allow minimal but necessary flexibility in their implementation.

External actions: financing instrument for development cooperation

2009/0060A(COD) - 03/02/2011 - Text adopted by Parliament, 2nd reading

The European Parliament adopted by 585 votes to 32, with 10 abstentions, a legislative resolution on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation.

It adopted its position at second reading under the ordinary legislative procedure.

The amendments concern in particular the issue of **delegated acts** and may be summarised as follows:

Following the entry into force of the Lisbon Treaty, the European Parliament is now fully recognised as co-legislator alongside the Council on virtually all legislation. Parliament considers that this should be reflected in the area of the implementation of external cooperation financial instruments. During

the first reading in October 2010, Parliament expressed its favour for the application of the "delegated acts" procedure for the financing instruments for external assistance. This 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.

Consequently, Parliament calls for:

- the Commission to be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of Geographic Strategy Papers, Multi-annual Indicative Programmes and Strategy Papers for thematic programmes, as they supplement Regulation (EC) No 1905/2006 and are of general application;
- further instructions regarding the allocation of the overall amount among beneficiaries to be defined by the Commission by means of delegated acts;
- the annual action programmes to be adopted by the Commission taking into account the opinions of the European Parliament and of the Council;
- where the cost of such measures exceeds EUR 10 million, the Commission to adopt them taking into account the opinions of the European Parliament and of the Council. For special measures below EUR 10 million, the Commission shall send the measures to the European Parliament and to the Council for information within one month of adopting its decision;
- amendments to special measures, such as those making technical adjustments, extending the implementation period, reassigning funds within the forecast budget, or increasing or reducing the size of the budget by less than 20 % of the initial budget, provided those amendments do not affect the initial objectives set out in the Commission decision, shall be communicated within one month to the European Parliament and to the Council;
- the Commission to regularly monitor and review its programmes, and evaluate the results of the implementation of geographical and thematic policies and programmes, and of sectoral policies and the effectiveness of programming, where appropriate by means of independent external evaluations, in order to ascertain whether the objectives have been met and enable it to formulate recommendations with a view to improving future operations. Proposals by the European Parliament, the national parliaments or the Council for independent external evaluations shall be taken into due account. Particular attention shall be given to social sectors and to progress made towards achieving the Millennium Development Goals (MDGs);
- the Commission to examine the progress made in implementing the measures taken under this Regulation and shall submit to the European Parliament and the Council an annual report on the implementation and the results and, as far as possible, on the main outcomes and impacts of the assistance.

Other amendments focus on the objectives, scope and duration of the delegation of power, as well as the conditions to be respected by the delegations.

External actions: financing instrument for development cooperation

2009/0060A(COD) - 01/12/2011 - Text adopted by Parliament, 3rd reading

The European Parliament adopted by 590 votes to 22, with 20 abstentions, at third reading of the ordinary legislative procedure, a legislative resolution on the joint text approved by the Conciliation Committee for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation.

Parliament decided to accept the compromise package, in a spirit of compromise, as the remaining duration of the current instruments is rather short. It regrets that due to Council's rigidity it was not possible to further improve the text of the DCI/BAM instrument, **in particular in relation to Parliament's role in strategic decisions**, where an equal footing between the co-legislators is essential.

Parliament underlines that **this result does not set a precedent for the future negotiations on the post-2013 external financing instruments.** It declares that, in accordance with the criteria defined in Article 290(1) of the Treaty on the Functioning of the European Union, it will insist on the use of delegated acts wherever strategic political decisions are involved on financing and programming with regard to those instruments.

It should be noted that the resolution is accompanied by a statement by the European Parliament and the Council which was confirmed by the Parliament in plenary:

Statement by the European Parliament and the Council on the use of Delegated Acts in the future Multiannual Financial Framework (MFF) 2014-2020: the two institutions take note of the Commission Communication "[A Budget for Europe 2020](#)", in particular in relation to the proposed use of delegated acts in the future external financing instruments and await legislative proposals, which will be duly considered. The document states that the future legal bases for the different instruments will propose the extensive use of delegated acts to allow for more flexibility in the management of the policies during the financing period, while respecting the prerogatives of the two branches of legislator. It is considered that democratic scrutiny of external aid must be improved. This could be achieved by the **use of delegated acts in accordance with Article 290 of the Treaty** for certain aspects of programmes, not only placing the co-legislators on an equal footing but also ensuring more flexibility in programming.

External actions: financing instrument for development cooperation

2009/0060A(COD) - 13/12/2011 - Final act

PURPOSE: to amend Regulation (EC) No 1905/2006 establishing an instrument for development cooperation (DCI) in order to provide, on a case by case basis, eligibility of taxes for Community financing.

LEGISLATIVE ACT: Regulation (EU) No 1339/2011 of the European Parliament and of the Council amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation.

CONTENT: in order to improve the effectiveness and transparency of the Community's external assistance, a new framework for planning and delivering assistance was established in 2006 which included a series of regulations including Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation.

In implementing those Regulations inconsistencies emerged regarding exceptions to the principle of non-eligibility for Union financing of costs related to taxes, duties and other charges. This is why the European Parliament and the Council decided, following the agreement they reached in conciliation, to amend the relevant provisions of the Regulation in order to align it with the other instruments.

The objective is therefore to provide for a certain degree of flexibility, as is the case for the other financial instruments applicable to the Community's external cooperation, regarding the **eligibility for Community financing of costs related to taxes, duties and other charges**, which would not be authorised in principle.

ENTRY INTO FORCE: 31/12/2011.

DELEGATED ACTS: a certain number of amendments were the subject of intense debate in the Conciliation Committee on the question of the scope of the powers conferred on the Commission in the context of the implementation of this programme. In this regard, a bilateral declaration was inserted in the amended Regulation stipulating that as of the next programming period for the future external assistance financial instruments **delegated acts** would be used in order to enable the more flexible management of policies over the financing period, while respecting the prerogatives of the two branches of legislator (Parliament and the Council). The Commission specifically states that, with a view to the improved democratic scrutiny of external assistance, the use of delegated acts **in accordance with Article 290 of the Treaty** for certain aspects of programmes, would not only place the co-legislators on an equal footing but would also ensure more flexibility in programming (on this point, please refer to the Commission's communication entitled "[A budget for Europe 2020](#)").