






Basic information	
<p><b>2009/0060B(COD)</b></p> <p>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation</p>	Procedure completed
<p>External actions: financing instrument for the promotion of democracy and human rights worldwide</p> <p>Amending Regulation (EC) No 1889/2006 <a href="#">2006/0116(COD)</a> See also <a href="#">2009/0059(COD)</a> See also <a href="#">2009/0060A(COD)</a> See also <a href="#">2010/0059(COD)</a></p> <p><b>Subject</b></p> <p>6.10.08 Fundamental freedoms, human rights, democracy in general</p>	




Key players				
European Parliament	<b>Committee responsible</b>		<b>Rapporteur</b>	<b>Appointed</b>
	<a href="#">CODE</a> Parliament delegation to Conciliation Committee		GÁL Kinga (PPE)	15/02/2011
	<b>Former committee responsible</b>		<b>Former rapporteur</b>	<b>Appointed</b>
	<a href="#">AFET</a> Foreign Affairs		GÁL Kinga (PPE)	22/10/2009
			LOCHBIHLER Barbara (Verts/ALE)	22/10/2009
	<a href="#">AFET</a> Foreign Affairs		GÁL Kinga (PPE)	13/01/2011
			LOCHBIHLER Barbara (Verts/ALE)	13/01/2011
<b>Former committee for opinion</b>		<b>Former rapporteur for opinion</b>	<b>Appointed</b>	
<a href="#">DEVE</a> Development		The committee decided not to give an opinion.		
Council of the European Union	<b>Council configuration</b>		<b>Meetings</b>	<b>Date</b>
	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	Commission DG	Commissioner
	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		
01/06/2010	Vote in committee, 1st reading		Summary
08/06/2010	Committee report tabled for plenary, 1st reading	A7-0188/2010	
20/10/2010	Debate in Parliament		
21/10/2010	Decision by Parliament, 1st reading	T7-0380/2010	Summary
21/10/2010	Results of vote in Parliament		
10/12/2010	Council position published	16446/1/2010	Summary
16/12/2010	Committee referral announced in Parliament, 2nd reading		
26/01/2011	Vote in committee, 2nd reading		Summary
28/01/2011	Committee recommendation tabled for plenary, 2nd reading	A7-0014/2011	
03/02/2011	Decision by Parliament, 2nd reading	T7-0031/2011	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	00058/2011	
24/11/2011	Report tabled for plenary, 3rd reading	A7-0404/2011	
28/11/2011	Decision by Council, 3rd reading		
30/11/2011	Debate in Parliament		
01/12/2011	Decision by Parliament, 3rd reading	T7-0534/2011	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	2009/0060B(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)

<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Regulation
<b>Amendments and repeals</b>	Amending Regulation (EC) No 1889/2006 <a href="#">2006/0116(COD)</a> See also <a href="#">2009/0059(COD)</a> See also <a href="#">2009/0060A(COD)</a> See also <a href="#">2010/0059(COD)</a>
<b>Legal basis</b>	Treaty on the Functioning of the European Union TFEU 209-p1 Treaty on the Functioning of the European Union TFEU 212
<b>Other legal basis</b>	Rules of Procedure EP 165
<b>Stage reached in procedure</b>	Procedure completed
<b>Committee dossier</b>	CODE/7/05312

<a href="#">Documentation gateway</a>				
<b>European Parliament</b>				
<a href="#">Document type</a>	<a href="#">Committee</a>	<a href="#">Reference</a>	<a href="#">Date</a>	<a href="#">Summary</a>
Committee draft report		<a href="#">PE430.281</a>	10/11/2009	
Amendments tabled in committee		<a href="#">PE430.697</a>	06/05/2010	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0188/2010</a>	08/06/2010	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0380/2010</a>	21/10/2010	<a href="#">Summary</a>
Committee draft report		<a href="#">PE456.703</a>	14/01/2011	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A7-0014/2011</a>	28/01/2011	
Text adopted by Parliament, 2nd reading		<a href="#">T7-0031/2011</a>	03/02/2011	<a href="#">Summary</a>
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		<a href="#">A7-0404/2011</a>	24/11/2011	
Text adopted by Parliament, 3rd reading		<a href="#">T7-0534/2011</a>	01/12/2011	<a href="#">Summary</a>
<b>Council of the EU</b>				
<a href="#">Document type</a>		<a href="#">Reference</a>	<a href="#">Date</a>	<a href="#">Summary</a>
Council position		<a href="#">16446/1/2010</a>	10/12/2010	<a href="#">Summary</a>
Draft final act		<a href="#">00058/2011/LEX</a>	13/12/2011	
<b>European Commission</b>				
<a href="#">Document type</a>		<a href="#">Reference</a>	<a href="#">Date</a>	<a href="#">Summary</a>
Legislative proposal		<a href="#">COM(2009)0194</a> 	21/04/2009	<a href="#">Summary</a>
Commission communication on Council's position		<a href="#">COM(2010)0789</a> 	13/12/2010	<a href="#">Summary</a>
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2011)0170</a> 	01/04/2011	<a href="#">Summary</a>

## Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CSL/EP	Joint text approved by Conciliation Committee co-chairs	<a href="#">00058/2011</a>	31/10/2011	

## Additional information

Source	Document	Date
National parliaments	<a href="#">IPEX</a>	
European Commission	<a href="#">EUR-Lex</a>	

## Final act

[Regulation 2011/1340](#)  
[OJ L 347 30.12.2011, p. 0032](#)

[Summary](#)

# External actions: financing instrument for the promotion of democracy and human rights worldwide

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

The European Parliament adopted, by 579 votes to 34, with 24 abstentions, at third reading under 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 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

The European Parliament approves the joint text.

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 the promotion of democracy and human rights worldwide

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

**PURPOSE:** to amend Regulation (EC) No 1889/2006 establishing a European Instrument for Democracy and Human Rights ([EIDHR](#)) in order to provide, on a case by case basis, eligibility of taxes for Community financing.

**LEGISLATIVE ACT:** Regulation (EU) No 1340/2011 of the European Parliament and of the Council amending Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

**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 1889/2006 on the promotion of democracy and human rights worldwide.

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](#)").

## External actions: financing instrument for the promotion of democracy and human rights worldwide

2009/0060B(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 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

In its opinion, the Council recalled that the instrument for the promotion of democracy and human rights worldwide (EIDHR) 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 Development Cooperation Instrument (DCI) 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 13, paragraph 6.

**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 financing instrument for the promotion of democracy and human rights worldwide and the [modification of the financial instrument of the Development Cooperation Instrument\(DCI\)](#).

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 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 the promotion of democracy and human rights worldwide

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

The European Parliament adopted by 586 votes to 33, with 8 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 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

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 strategy papers, as those strategy papers supplement Regulation (EC) No 1889/2006 and are of general application;
- annual action programmes, and any revisions or extensions thereof, to be adopted by the Commission taking into account the opinions of the European Parliament and of the Council;
- all measures of which the cost is equal to or exceeds EUR 3 000 000 to be adopted by the Commission taking into account the opinions of the European Parliament and of the Council;
- special measures costing below EUR 3 000 000 to be sent, by the Commission, to the European Parliament and to the Council within a given time limit.

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 the promotion of democracy and human rights worldwide

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

The European Parliament adopted by 577 votes to 17, with 18 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 1905/2006 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 17(a)).

**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 3 000 000, 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 3 000 000, the Commission shall send the measures to the European Parliament and to the Council for information within 10 working days of adopting its decision.

**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.

## External actions: financing instrument for the promotion of democracy and human rights worldwide

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

In its communication to the European Parliament concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council amending regulation (EC) n° 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, the Commission states that it 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 the 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.

The Commission can accept the Council position at first reading.

## External actions: financing instrument for the promotion of democracy and human rights worldwide

2009/0060B(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 1889/2006 establishing a financial instrument for the promotion of democracy and human rights worldwide.

In its opinion, **the Commission indicates that it is unable to accept the amendments relating to delegating actions and comitology issues.** On the other hand, the Commission accepts an amendment introduced by the European Parliament the purpose of which is for a mid-term revision, already accepted by the Council in first reading.

The discussions with the co-legislators shall continue after the second reading, in order to work on a consensual solution **preferably giving EP substantive scrutiny rights 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 the promotion of democracy and human rights worldwide

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

**PURPOSE:** to amend Regulation (EC) No 1889/2006 establishing a European Instrument for Democracy and Human Rights (EIDHR) 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 EIDHR and on the parallel proposal [amending the DCI](#).