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COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION STAFF WORKING PAPER

**accompanying the
proposal for a
COUNCIL REGULATION**

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

EXECUTIVE SUMMARY OF THE

IMPACT ASSESSMENT

{COM(2009)197 final}
{SEC(2009)532}
{SEC(2009)533}

INTRODUCTION

A mid-term review (MTR) was provided for in each of the seven new external action financial instruments for 2007-2013: DCI, ENPI, IPA, IfS, EIDHR, INSC and ICI¹. The Commission must submit a report evaluating their implementation accompanied, if appropriate, by legislative amendments. Although the Regulations set a deadline of 31 December 2010, the Commission agreed — at the EP’s request — to present the review before the 2009 elections, i.e. to the same legislature which co-decided the instruments. The review was conducted by Commission staff reporting to the inter-services Group on the MTR of the financial instruments. The Commission also agreed that before adopting the MTR it would take into account the views that Parliament had expressed in the process of democratic scrutiny of DCI programming. The main issue relates to the financing of activities which might not qualify as official development assistance (ODA) in countries covered by the DCI Regulation, No 1905/2006 (Latin America, Asia, Central Asia, plus Iraq, Iran, Yemen, and South Africa). This issue relates only to countries covered by the DCI, as other instruments do not stipulate that activities must qualify as ODA. Besides this proposal, the MTR of the financial instruments will also produce amendments to the IfS (adjusting its scope as regards small arms and light weapons, on participation and rules of origin, and on the breakdown of the financial allocations) and an amendment to the DCI and EIDHR regulations to align the wording on taxes, duties, and charges with the other instruments.

PROBLEM DEFINITION

The limited scope of the DCI Regulation

The DCI Regulation excludes measures which do not meet the Official Development Assistance (ODA) criteria set by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC). This limitation is enshrined in Article 2(4) of the DCI Regulation, which states that measures for geographic programmes must be designed to meet the criteria for ODA eligibility. Parliament identified a number of problematic cases during the democratic scrutiny and committee “droit de regard” process. As a result it passed a series of resolutions condemning the Commission for exceeding its powers in adopting such projects under the DCI Regulation and calling for their withdrawal. This legal restriction has given rise to three problems:

- (1) there are no legal provisions allowing measures ineligible as ODA to be financed;
- (2) the Commission and Parliament hold diverging views on the eligibility of certain programmed actions;
- (3) there is a risk of having to discontinue financing for activities carried out under the Preparatory Actions and for the ‘EU mobility’ component of the Erasmus Mundus External Window Cooperation (EMEWC).

The need to fill the legislative gap

¹ The Development Cooperation Instrument (DCI), the European Neighbourhood and Partnership Instrument (ENPI), the Instrument for Pre-accession Assistance (IPA), the Instrument for Stability (IfS), the European Instrument for Democracy and Human Rights (EIDHR), the Instrument for Nuclear Safety Cooperation (INSC), and the Instrument for Cooperation with Industrialised Countries (ICI).

The Budget Authority voted to include a series of Preparatory Actions in the budget to finance these ‘non-ODA activities’ for the regions and countries concerned by this problem (i.e. business and scientific exchanges with India and China, cooperation with middle-income-group countries in Asia and in Latin America). Further to the implementation of the Preparatory Actions, which started in 2007 and 2008, in the MTR a clear need emerged to follow up and to build on these Preparatory Actions in order to offer scope to fund measures going beyond ODA in these countries, particularly in emerging countries. It should also ensure that some energy projects and public diplomacy activities that will not be ODA-eligible (e.g. in Central Asia and in Iraq/Iran) can be financed.

OBJECTIVES

The general policy objective should be similar to the those set out in the ICI Regulation (No 1934/2006) for the DCI countries, that is *‘to provide a specific response to the need to strengthen links and to engage further with them 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 these countries and territories and to promote dialogue while fostering Community's interests.’*

The proposed regulation will finance projects which meet the following main operational objectives:

- promotion of economic partnership and business in EU interests
- people to people links/education cooperation
- public diplomacy and outreach
- dialogue
- cooperation projects which do not meet the ODA criteria.

It is proposed to cover the DCI countries only. The IPA and ENPI regulations are not limited in the same way, and ACP countries are covered under the EDF. The overall allocation is expected to be €176 million over the 2010-2013 period. Funding should come from Heading 4 and comply with the Financial Framework for 2007-2013. Although the Preparatory Actions were funded from the margin of Heading 4 for 2007-2009, some redeployment from the cooperation programmes will be necessary to fund the intended activities adequately.

The current initiative aims to fill a legislative gap within the current legal and budgetary constraints 2007-2013. The present initiative has therefore a limited scope in terms of its policy content, budgetary implications and time frame. It does not prejudice any future proposal on external cooperation financial instruments under the next financial framework.

POLICY OPTIONS AND ASSESSMENT

Spending programmes require a basic act. The following four options for tackling the problem have been considered:

1. No EU action: cooperation with the countries concerned remains strictly in the framework of the DCI regulation.
2. Amend DCI Regulation: add an additional strand to the regulation to finance ‘non-ODA activities’ with a ring-fenced amount.

3. Amend ICI Regulation: extend the geographical scope of the regulation to DCI countries with a ring-fenced amount.
4. Table a new instrument.

The different options have been analyzed on the criteria of coherence, efficiency and effectiveness. Option 1 is not considered a valid option in view of the need to fill the legislative gap. Option 2 would be the most coherent, but it is not recommended as it would bring different objectives under the same regulation: eradicating poverty and fostering Community interests. Option 3 is considered the most appropriate and effective legislative option in view of the major simplification of the financial instruments (replacing more than 30 different legal instruments). The ICI also covers non-ODA purposes, and its provisions and legal base (Article 181a of the Treaty) are suited to covering the intended activities.

CONCLUSION

Taking into account established objectives and areas of cooperation, the third option is preferred, 'Amending the ICI regulation'. It is therefore recommended that the ICI's geographical scope be extended to the DCI countries and that the legislative amendment be put forward in the framework of the mid-term review of the financial instruments.