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EUROPEAN COMMISSION

Brussels, 13.12.2010
COM(2010) 788 final

2009/0060/A (COD)

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

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',
COM(2009)194)**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2009) 194 final – (2009)/0060A COD):	transmission: 21 April 2009 corrigendum: 30 November 2009), amended: 01 December 2009 (entry into force of the Lisbon Treaty)
Date of the opinion of the European Parliament, first reading:	21 October 2010.
Date of transmission of the amended proposal:	[...].
Date of adoption of the position of the Council:	10 December 2010.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The various EU financial instruments for external cooperation contain a minor inconsistency regarding exceptions to the principle of non-eligibility for EU financing of costs related to taxes, duties and other charges imposed by third countries.

The development cooperation instrument (DCI) does not provide for flexibility as regards the non-eligibility of such costs for funding. The other instruments lay down that EU 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 eligibility in the interests of sound financial management and proper implementation of programmes and projects.

The proposal therefore simply adds the words “in principle” to the text.

3. COMMENTS ON THE COUNCIL POSITION

3.1. General comments on the Council position

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.

3.2. 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).

3.3. Specific issues (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).

4. CONCLUSION

The Commission can accept the Council position at first reading.