



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

ON THE COUNCIL'S COMMON POSITION ON THE  
CONTINUATION AND CONSOLIDATION OF THE  
EUROPEAN INVESTMENT PARTNERS FINANCIAL  
INSTRUMENT FOR THE COUNTRIES OF LATIN AMERICA,  
ASIA, THE MEDITERRANEAN REGION AND SOUTH AFRICA

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**I. HISTORY OF THE FILE.**

Date of transmission of the Commission's proposal:

22nd September 1994, COM(94)358 final - 94/0190 (SYN) published in O.J. N° C287 of 15th October 1994 pages 7 to 10.

Date of the European Parliament's first reading approval:

28th October 1994 approval document N° A4-0036/94 published in O.J. N° C323 of 21st November 1994 pages 494 to 497.

Date of transmission of modified proposal:

The Commission has not modified its proposal in the interim.

Date of the adoption by the Council of its common position:

22nd May 1995, published in the Official Journal on 26th June 1995 (N° C160).

**II. PURPOSE OF THE COMMISSION'S PROPOSAL.**

By means of a Council Regulation the Commission's proposal is to reinforce and continue the EC Investment Partners financial instrument for investment promotion in Asia, Latin America, the Mediterranean and South Africa. The text of the proposed regulation maintains the essential characteristics of the existing Council Regulation (319/92) and proposes improvements in the conditions of finance available under all of the facilities. The Commission proposal also includes specific provisions for reinforcement of the Commission's management, control and audit of funds, of its ongoing monitoring of actions financed and of its co-ordination of ECIP with other EC instruments for economic co-operation. A strengthened and obligatory anti-fraud reimbursement clause is proposed for all ECIP Framework Agreements.

The ECIP instrument began in September 1988 as a pilot experiment with limited budgetary means. Initially, the Commission did not propose a specific legal basis for this instrument. Instead ECIP was defined on the basis of Article 205 of the Treaty of Rome, and of the co-operation agreements with the developing countries of Asia, Latin America and the Mediterranean. The European Parliament provided the necessary credits from within its margin of manoeuvre (Non-Obligatory Spending). In December 1990, the Commission proposed to the Council a further phase of reinforcement for the ECIP instrument, by means of a specific regulation, and on 3 February 1992 the Council adopted the ECIP Regulation (EEC) N° 319/92 which is still the basis for the ongoing implementation of ECIP pending enactment of the new regulation which is the subject of this communication.

### III. COMMENTS ON THE COMMON POSITION.

#### III.1. BRIEF GENERAL REMARKS ON THE COUNCIL'S COMMON POSITION

The Commission appreciates the Council's unanimous First Reading Common Position on the Proposal to continue and consolidate the EC Investment Partners financial instrument. The Council's Common position approves the essentials of the Commission's proposal with certain specific amendments of a technical financial nature (see III.3. below).

While the Commission proposed an open-ended validity for the Regulation the Council, in agreement with the Parliament, has proposed only a five year validity 1995-99. After over 7 years operations of ECIP on a pilot and then a trial basis the Commission does not agree and maintains its proposal for an open-ended Regulation.

The Council has inserted a financial reference amount into the Regulation. Since the matter is not subject to co-decision, the Commission regrets this provision and declares that:

quote

"The Commission emphasises that the establishment of "type-clauses" for matters which are not subject to co-decision does not mean that the legislator must systematically use these clauses for all multiannual programmes. Indeed, according to the terms of the Declaration of 6th March 1995, the inclusion of financial amounts in legal instruments which are not subject to co-decision should in fact be the exception. The Commission does not generally have the intention of including financial amounts in its proposals for legal instruments which are not subject to co-decision." unquote.

The Commission therefore rejects the financial reference amount Article and declares that the amount has only an illustrative value.

As regards Comitology the Commission proposed, as in the existing regulation (319/92), to use the existing ALAMED committees (Type III A) and used the same text as in the previous regulation to explain their operating procedures. The Council agreed unanimously. The Parliament has proposed a Consultative Committee of Type I, as foreseen in Article 2 of the Council's Decision N° 87/373 (establishing the procedures for exercising the responsibilities given to the Commission). The Commission appreciates the Parliament's proposal but does not alter its proposal at this stage.

Otherwise the new provisions introduced by the Council are of a more or less technical nature and they are commented in detail below (section III.3.).

## III.2. COMMISSION COMMENTS ON PARLIAMENT'S FIRST READING

The Parliament proposed at its First Reading Approval of 28th October 1994 the following amendments :

### AMENDMENT N° 1

#### Article 1

The Commission proposed an open-ended period of validity for the regulation. The Parliament proposed a five year validity.

Commentary: after over 7 years of pilot and then trial period operations of ECIP the Commission maintains the view that ECIP has reached maturity and so justifies a regulation with an open-ended period of validity.

Commission Position: the Commission rejects this amendment.

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### AMENDMENT N° 9

#### Article 5 bis (new)

The Commission makes no mention in the text itself of the Regulation of budgetary imputations. These should be dealt with separately in the framework of the annual budgetary procedure. The Parliament wishes to maintain imputation to Budget Article B7-5000 in the text of the Regulation.

Commission position: the Commission rejects amendment N° 9. (The Council is of the same opinion).

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### AMENDMENT N° 2

#### Article 6, para 1

As in the existing Regulation the Commission had indicated "quality" of the promoters among the criteria for project choice. The Parliament proposed to replace this with "good repute", and the Council proposed to add "good repute" to quality.

Commission Position: the Commission agrees with the amendments proposed by the Parliament, and the Council.

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### AMENDMENT N° 3

#### Article 6, para 2

The Commission's proposed text provides that the Commission will take account in approving actions of the criteria enumerated in the regulation and of the action's compatibility with other Community policies. The Parliament wants to add "without neglecting democracy and human rights and respect for workers' rights".

Commission Position: the Council has proposed a text for the preamble (the thirteenth "whereas") which covers the Parliament's wishes and the Commission accepts the Council's text (see Section III.3 below).

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### AMENDMENT N° 10 (COMITOLOGY)

As regards Comitology the Commission proposed, as in the existing regulation (319/92), to use the existing ALAMED committees (Type III A) and used the same text as in the previous regulation to explain their operating procedures. The Council agreed unanimously. The Parliament has proposed a Consultative Committee of Type I, as foreseen in Article 2 of the Council's Decision N° 87/373 (establishing the procedures for exercising the responsibilities given to the Commission).

Commission Position: the Commission appreciates the Parliament's proposal but does not alter its own proposal at this stage.

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### AMENDMENT N° 5

#### Article 8, para 3, introduction

The Commission's proposed text, carried over from the previous regulation, referred to the procedures for the committee while the Parliament's text refers to its responsibilities.

Commission Position: the Commission accepts this amendment because the Parliament's text is more precise and well defines the responsibilities of these committees.

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### AMENDMENT N° 6 (COMITOLOGY)

#### Article 8, para 4

As regards Comitology the Commission proposed, as in the existing regulation (319/92), to use the existing ALAMED committees (Type III A) and used the same text as in the previous regulation to explain their operating procedures. The Council agreed unanimously. The Parliament has proposed a Consultative Committee of Type I, as foreseen in Article 2 of the Council's Decision N° 87/373 (establishing the procedure for exercising the responsibilities given to the Commission).

Commission Position: the Commission appreciates the Parliament's proposal but does not alter its proposal at this stage.

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### AMENDMENT N°s 7 and 12

#### Article 8, para 5

The Parliament requests that: "the Commission shall inform the European Parliament of the decisions it proposes to take regarding the applications submitted to the committee referred to in Article 8(2)."

Commentary: such a prior information mechanism would render ECIP unmanageable. Anyway, the subjects to be dealt with by this committee are of a technical nature and very clearly defined (choice of financial institutions and revision of financial amounts of the four facilities).

The information requested is anyway communicated to the Parliament ex post in the Annual Reports provided for at Article 9.1.

Commission Position: The Commission rejects this amendment.

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### AMENDMENT N° 13

#### Article 8, para 6

The Commission proposed:

"8.6. In order to ensure consistency of co-operation and to improve complementarity, between operations, the Commission and the European Investment Bank shall exchange any relevant information on financing that they envisage granting."

and the Parliament request that the Commission and EIB "... shall inform the budgetary authority thereof."

Such a prior information mechanism would render ECIP unmanageable. Also the matters to be dealt with are often a banking and a commercial confidentiality (especially as regards the EIB) and highly technical.

Appropriate (non-confidential) information on these matters will be provided to the Parliament ex post in the Annual Reports provided for at Article 9.1.

Commission Position: the Commission rejects this amendment.

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### AMENDMENT N° 14

#### Article 9, para 1

The Parliament requests that the Annual Report on ECIP "... be accompanied by an up-dated financial statement."

Commentary: these financial statements are established:-

- a) in the context of the proposals for new policies in order to estimate the costs foreseen (see Annex VI to the Commission's Proposal for ECIP); and
- b) annually in the framework of the proposal and negotiation of the annual budget.

Commission Position: the Commission rejects this amendment. It does not think it is appropriate to "update" these financial statements in April each year. The Commission does, however, assure the Parliament and the Council that it will annex to the Annual Reports a copy of the financial statement established in the budgetary procedure for the year when the report is presented.

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#### AMENDMENT N° 15

##### Article 9, para 2

The Parliament has requested that the independent evaluation of ECIP includes "... an assessment of the implementation of the principles of good financial management, economy, and a cost/benefit analysis of the instrument". The Council has agreed with this.

Commission Position: the Commission accepts this amendment.

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#### AMENDMENT N° 16

The Parliament asks that the costs of this technical assistance "... be estimated each year within the framework of the budgetary procedure."

Commission Position: The Commission rejects this amendment. It can provide the Parliament and the Council information ex post in the Annual Reports (Article 9.1) on the credits affected to these actions.

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### III.3. CHANGES INTRODUCED BY THE COUNCIL AND COMMISSION'S POSITION ON THEM.

The Council's Common Position approves the essentials of the Commission's proposal and makes specific technical modifications in particular as regards financial matters. (Numbering below refers to the Council Common Position text.)

#### Respect of human rights (preamble)

Commission position: Commission accepts the Council's textual proposal which is on the same lines as the Parliament's amendment N° 3.

#### Financial Reference amount MECU 250 (last "preamble" and new Article 8).

Since the matter is not covered by co-decision the Commission comments that it quote

"The Commission emphasises that the establishment of "type-clauses" for matters which are not subject to co-decision does not mean that the legislator must systematically use these clauses for all multiannual programmes. Indeed, according to the terms of the Declaration of 6th March 1995, the inclusion of financial amounts in legal instruments which are not subject to co-decision should in fact be the exception. The

Commission does not generally have the intention of including financial amounts in its proposals for legal instruments which are not subject to co-decision." unquote

Commission position: The Commission refuses this amendment and declares that the amount only has an illustrative value.

Five year validity (Article 1)

The Commission considers that after over seven years operation on a trial basis ECIP now justifies an open-ended regulation.

Commission position: The Commission refuses this amendment.

Tripartite operations with other developing countries (Article 1)

The Commission accepts this amendment which would allow ECIP to play a greater role in promoting regional integration of the private sector, particularly in Southern Africa.

"Equity" loans (Article 2.3)

The Commission accepts the Council's amendment.

Facility 4 grants only for SMEs (Article 2.4)

The Commission accepts the Council's proposal to limit grant funding under this facility only to SMEs.

Facility 3 priority for SMEs (Article 4.4)

The Commission accepts the Council's re-introduction of the previous Regulation's text here giving a priority to SMEs for this facility.

Facility 4 grants only for SMEs (Article 4.5)

Commission accepts. See Article 2.4 above.

"Equity" loans (Article 5)

Commission accepts. (See Article 2.3 above).

Revolving funds (Article 5.4)

The Commission accepts the Council's amendment (to exclude revolving funds in the financial institutions) which takes into account the recommendations of the Court of Auditors.

"Good Repute" of beneficiaries (Article 6.1.a)

The Commission accepts the Council's addition, which was proposed by the Parliament.

"and the working conditions of women" (Article 6.1.b.)

Commission accepts.

Financial Reference Amount (New Article 8)

The Commission rejects the Council's proposal (see above and Conclusion IV) and declares that the amount has only an illustrative value.

Comitology (previous Article 8, new Article 9)

See comments in Section III.4.

Co-ordination with other comparable instruments (New para 7 of Article 9)

The Commission accepts the Council's proposal to reinforce the text on co-ordination with other instruments.



Annual Report to include total investment, number of joint ventures and jobs created (Article 10.1)

Commission accepts.

"Independent Appraisal to include good financial management, economy and cost/benefit analysis" (Article 10.2)

Commission accepts.

Also accepts to report "before end of 1998".

Entry into force (Article 11)

Commission accepts entry into force day after publication but does not accept expiry 31st December 1999 (see above) because this implies only a five year validity.

#### III.4. COMITOLOGY.

As regards Comitology the Commission proposed, as in the existing regulation (319/92), to use the existing ALAMED committees (Type III A) and used the same text as in the previous regulation to explain their operating procedures. The Council has unanimously agreed. The Parliament has proposed a Consultative Committee of Type I, as foreseen in Article 2 of the Council's Decision N° 87/373 (establishing the procedure for exercising the responsibilities given to the Commission). The Commission appreciates the Parliament's proposal but does not alter its proposal at this stage.

#### IV. CONCLUSION.

The Council's Common Position is unanimous. Their text takes up the Parliament's wish explicitly to take into account human and workers' rights and also accepts the Parliament's amendments as regards the "good repute" of economic operators, and the independent appraisal of "the principle of good financial management, economy and cost/benefit analysis".

The Commission accepts many of the Council's amendments but maintains its substantial reserves on the Council's amendments as regards the period of validity of the regulation, and the Council's "Financial Reference Amount".

While the Commission proposed an open-ended validity for the Regulation the Council, in agreement with the Parliament, has proposed only a five year validity 1995-99. After over 7 years operations of ECIP on a pilot and then a trial basis the Commission maintains its proposal for an open-ended Regulation.

The Council has inserted a financial reference amount into the Regulation. Since the matter is not subject to co-decision, the Commission regrets this provision and declares that:

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"The Commission emphasises that the establishment of "type-clauses" for matters which are not subject to co-decision does not mean that the legislator must systematically use these clauses for all multiannual programmes. Indeed, according to the terms of the Declaration of 6th March 1995, the inclusion of financial amounts in legal instruments which are not subject to co-decision should in fact be the exception. The Commission does not generally have the intention of including financial

amounts in its proposals for legal instruments which are not subject to co-decision." unquote.

and that the amount inserted is only of an illustrative nature.

With the above comments and two substantial reserves the Commission accepts the text of the Council's unanimous Common Position published 26th June 1995 and communicates its position urgently to the Parliament.

**Annex: Comparative table showing Commission's Proposal, Parliament First Reading Amendments, Council Common Position and Commission Position thereon.**