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From Austrian to Finnish Presidency

Analysing the Austrian Presidency proposal for the Development Co-operation Instrument

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Eurostep is a member of CONCORD

*Eurostep A.I.S.B.L. 115 Rue Stévin, 1000 Brussels, Belgium
Tel. +32 2 231 16 59 Fax. +32 2 230 37 80
E-mail: admin@eurostep.org Web: www.eurostep.org*

The pledges on Development Cooperation

In 2005, Europe made significant promises to the developing world. The European Union (EU) sought, and demonstrated, leadership in the run up to the G8 and World Summit. This raised expectations, both in Europe and in the developing world, about the role that the EU intends to play in the fight to eradicate worldwide poverty and in achieving the Millennium Development Goals by 2015.

These EU's commitments were made as the Union has been working to finalise the European Community budget for the years 2007-2013, with a revised set of legal instruments to cover the Community's spending for the period. The establishment of these new instruments, and in particular the instruments governing the Community's co-operation with developing countries, provide the framework to translate the promises into their delivery on the eradication of poverty.

The European Parliament takes responsibility

The European Parliament adopted its first reading on the principal instrument covering the EU's co-operation with developing countries on 18 May in accordance with the EU's co-decision procedure¹ which forms the procedural basis for legislating the EU's competence on development.

In adopting the report of its Development Committee the plenary of the European Parliament made it clear that it expected any new Development Co-operation Instrument to apply to the developing countries only and to be guided by the EU's development policy objectives.

The European Parliament proposed a Development Co-operation Instrument that is

- Limited to only covering developing countries in its geographic scope;
- Based on the development co-operation treaty article only (179EC) – in line with legal opinion on the matter: Art. 181(TEC), which the Commission introduced as a legal basis for the instrument was in fact never intended as a legal basis for EU actions in developing countries, as has been clearly clarified during the negotiations regarding the clarification of the articles established in the Constitutional Treaty, as well as in the opinions from the Council² and Parliament³ legal services. The European Parliament's position to base the future Development Co-operation Instrument solely on Article 179 is therefore not only justified by past practice, but is clearly supported by legal opinions and the opinion of the Parliament Legal Affairs Committee⁴.

The European Parliament also proposed amendments to retain its co-decision powers in development co-operation.

Turn of Member States to take responsibly

The ball is now in the court of the Council and the turn of the Member States to ensure that the new instrument will advance the achievement of the Millennium Development Goals and the eradication of poverty.

Following Parliament's vote, the Austrian Presidency tabled a draft compromise proposal.

The Austrian Presidency proposal includes some of the key proposals of the Parliament's position, notably the establishment of an instrument limited to developing country co-operation that is based solely on Treaty Article 179. This is in recognition of the solid legal foundation of the Parliament's position.

¹ Under the co-decision procedure the European Parliament and Council are both involved in defining the text of a legal decision.

² Council of the European Union, Opinion of the Legal Service N°8095/05

³ European Parliament, Legal Opinion SJ-0809/05

⁴ European Parliament, Committee on Legal Affairs, 31 January 2006, Opinion on the legal basis of the proposal for a regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation and economic cooperation

However, the Austrian Presidency text is still heavily informed by the intention, which the Commission clearly expressed, to water down the commitments the European Union made in the 2005 pledges on development co-operation. Unfortunately the Austrian text can therefore not be viewed as a feasible compromise. It does not provide a consistent legal proposal and is full of internal contradictions.

The Austrian Presidency proposals echo the statement made by Commissioner Ferrero-Waldner to the Parliament on 18 May, following the Parliament's adoption of its report on the Development Co-operation Instrument. Parliament's position on a Development Co-operation Instrument solely based on Article 179 TEC could be accepted, stated the Commissioner, but only if the concept of development is re-defined so as to ensure the **inclusion of a broad definition of development co-operation**.

Member States are discussing the proposed text by the Austrian Presidency and will be asked to vote on it. It is therefore crucial that Member States now take up their responsibility to bring these negotiations to a successful conclusion.

The Contradictions in the Austrian Presidency Proposal

The Austrian Presidency Proposal carries three major contradictions which have to be resolved before any instrument can be agreed. These are related to the following issues:

- Scope for 'redefinition' of development co-operation
- Clarification of 'exceptions' to be covered by the instrument
- Consideration of new policy content

Contradiction 1: 'definition' versus Acquis

The first contradiction is that the Austrian Presidency proposal accepts on the one hand the view that the principal aim of the Development Co-operation Instrument is development co-operation. On the other hand it then introduces the idea of a '*broad concept of development co-operation*'.

Surely the Member States will demand that the scope of development co-operation (narrow or broad) is defined within the existing basis provided for this in the EC Acquis Communautaire – notably the European Consensus on Development⁵, as well as the internationally agreed basis for Official Development Assistance of the OECD.

The Member States must insist that the Development Co-operation Instrument recognises the existing Acquis Communautaire (the European Consensus on Development) and international agreements regarding the scope of Official Development Assistance.

Contradiction 2: a proposal for 'definition' without justification, specification or explanation

The Austrian Presidency proposal argues that a broad definition is necessary in order to comprehend a number of actions outside the scope of Article 179(TEC).

Here the Austrian Presidency is following the European Commission which has continually argued that Article 179 TEC is not a sufficient legal basis for the EU's development co-operation with developing countries, even though the Commission has yet to convincingly identify any actions in the EC's co-operation with developing countries which could not be financed on the basis of Article 179 TEC. The Commission has identified, and withdrawn, various activities to

⁵ The European Consensus on Development, Joint Statement by the Council and the Representatives of the Governments of the member States meeting within the Council, the European Parliament and the Commission on the European Development Policy, 20 December 2005.

specify which actions they believe should be funded under the instrument, which would fall outside of the scope of Art. 179.

Initially, actions in the field of migration were identified, subsequently, it was claimed that it was required to cover security activities, such as financing the police force in Afghanistan. More recently, in its non-paper of 3 February 2006, the Commission argued that it was necessary to cover certain activities such as higher education, energy and transport. All of these activities fall within the scope of development policy, within article 179(TEC), and within the existing definition of development co-operation.

The Member States must insist that the Development Co-operation Instrument is based on a clear legal basis, and any exceptions to the legal basis are both clarified and justified.

Contradiction 3: New and detailed policy content versus lack of democratic process

The Commission had initially wanted the Instrument to be a broad undefined framework for external co-operation, a view rejected by the Parliament as it provided inadequate accountability.

The European Parliament voted for a framework of enabling and policy-setting legislation, which would provide greater accountability and transparency.

The Austrian Presidency Text introduces the Development Co-operation Instrument as a policy setting instrument. It ignores Parliament's resolutions for separate geographic instruments for Latin American and other regions.

Proposing new text with vast implications in many different areas of policies, the Presidency is manoeuvring to ensure that Parliament will not be able to consider these policies in a second reading.

Any forced agreement on vast policy areas covered previously by numerous co-decided legislations is an unacceptable short-cut - lacking accountability and transparency – which the European Parliament should never accept. It would dramatically reduce the Parliament's powers in development co-operation, a key external policy of the European Union.

The Member States must insist that the policies newly introduced in its first reading are properly considered by the Council Working Group on Development Co-operation (CODEV) and subsequently are taken through a proper second reading in the European Parliament so that the broadest possible consensus is achieved on the policies covered by the instrument.

Commission scare tactics

The Commission's strategy to impose its positions have so far focused on three areas:

1. Creating the fear that it will not approve a Human Rights Instrument

By hijacking the wish expressed by broad constituencies in the European Union that a separate Human Rights Instrument should be established, and making its introduction dependent upon agreement on Commission terms on the Development Co-operation Instrument is an extremely cynical strategy. Human Rights cannot be sold out against poverty eradication, and the European Union must always uphold its commitment to its core principles which include both upholding human rights and the eradication of poverty.

Member States should insist that the European Commission presents a proposal for a Human Rights Instrument and reject a strategy in which human rights are being bargained against poverty.

2. Running out of financial resources

The Commission keeps spreading the idea that resources will run out unless an instrument is agreed. This is untrue. The largest instrument which is to be integrated in the new instrument, the ALA regulation, does not expire and the Commission does not need a new regulation to implement its development policies in this area.

Member States should insist the new instrument is an improvement to the existing instruments and unless this is the case, Member States should not vote in favour for the new instrument.

3. Misinformation

The Commission has been suggesting that the European Parliament is proposing an infinite number of policy-setting resolutions. The European Parliament on the other hand has been clear that it is interested in consolidating the numerous existing regulations into one framework regulation and 4-5 policy-setting regulations (Latin America, Asia, South Africa, Thematic policies and possibly migration). This proposed structure would provide stability and flexibility. The alternative – a bulky regulation including all policies areas in one enabling and policy-setting regulation - creates an inflexible regulatory structure, which can only be changed by breaking open the entire regulation.

The European Parliament's proposal guarantees greater flexibility, specificity and adaptability to changing circumstances.

Member States should seriously consider the proposal by the European Parliament as a realistic option that will create greater stability and adaptability to changing circumstances and to changing political priorities, and will provide greater flexibility than the single regulation proposed by the Austrian Presidency.

Next steps to reach a deal for the poor

The Austrian Presidency has failed to provide a set of consistent proposals. Neither has it taken into account the constructive amendments provided by the European Parliament. It has also appeared – under the influence of the Commission - unable to provide an impartial platform for negotiations between the institutions.

The Finnish Presidency should take a fresh look at the situation. In a constructive atmosphere, a deal for the poor can be reached. The institutions can and should unite on such a deal. Bringing these negotiations to a successful conclusion would be a magnificent achievement for the Finnish Presidency.

Some have indicated that the negotiators of the Member States are 'tired'. The poor are certainly 'tired'. Tired of promises that haven't come through. Tired of pledges that haven't been realised. Tired of bargains that leave them in the cold.

The European Union pledged to set the Millennium Development Goals as a central piece of its development co-operation. Under the Finnish Presidency, it can translate the rhetoric into reality.

Member States should ensure that the Development Co-operation Instrument:

- **Covers developing countries only**
- **Is based on the legal base for development co-operation only (art 179)**
- **Is guided by the definition of development co-operation based on the Acquis Communautaire and the internationally agreed definition of Official Development Assistance**
- **Has its scope and content of the geographic and thematic policies and the priorities clearly and comprehensively defined in a democratic, accountable and transparent process**
- **Provides for the inclusion of the “call-back mechanism” as a means of last resort to ensure consistency of country, regional and thematic strategies with adopted thematic and geographic priorities.**