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Briefing N°34

The Development Co-operation Instrument

Response to the Presidency proposal

A democratic, efficient and transparent instrument?

June 2006

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In 2005, Europe made major promises to the developing world. The leadership role that the European Union (EU) played in the run up to the G8 and World Summit raised expectations, both in Europe and in the developing world. At the same time important decisions were taken regarding the European Community budget for the years 2007-2013, decisions that still need to be finalised. The future Development Cooperation Instrument provides an opportunity for Europe to deliver on its promises for more social justice and less inequalities.

Decisions on this instrument will have to be taken quickly if the new framework for EC spending in developing countries from the beginning of 2007 is to be put in place. The ball is now in the hands of the Council, following the adoption of the Parliament report on 18 May 2006. Through this report, the European Parliament made very clear that it will not accept a Development Co-operation Instrument unless 3 main conditions are fulfilled. Namely:

- The geographic scope of the instrument is limited to developing countries only;
- The legal basis of the instrument is limited to the development co-operation treaty article only (179EC);
- There is a strong role for the European Parliament in the definition of the geographic and thematic priorities of EC aid, with the additional of an ability to question the adoption of strategy papers with individual countries and regions if Parliament does not consider the outcome to be consistent with adopted policies and priorities.

Following this vote, the Council Presidency sent a draft compromise proposal to Parliament's negotiators, in order to reach an agreement before the adoption of a common position by the Council. We welcome the fact that the new Presidency proposal responds to some of the key concerns expressed by the Parliament. Indeed some problems in the original Commission proposals already identified by the European Parliament are highlighted within the new presidency draft.

We welcome the acknowledgement by both the Parliament and the Council Presidency (with the support of Coreper) of the need to move towards a single instrument for developing countries only, based solely on the development co-operation treaty article. However certain aspects of this draft must be improved if it is to establish the strong instrument that Europe crucially needs to deliver on its commitments to achieve the Millennium Development Goals.

Development Co-operation as defined in the EC Treaty and the European Consensus

The European Parliament, the Member States and Civil Society now seem to be convinced of the need to place the future Development Cooperation Instrument solely under the development co-operation legal basis of the treaty: Article 179 EC. This is entirely in line with the opinions from the Council¹ and Parliament² legal services and the opinion of the Parliament Legal Affairs Committee³.

The Commission has not yet adequately identified any appropriate actions in the EC's co-operation with developing countries which could not be financed on the basis of Article 179 TEC. Their justifications for including Article 181a TEC as a legal basis for the development co-operation and Economic Co-operation Instrument have changed throughout the course of the negotiations. Initially, certain Commission representatives identified actions in the field of migration as justification for using article 181aTEC. Subsequently, they claimed that it was necessary to cover security activities. Other Commission officials justified the inclusion of Article 181a TEC by citing the example of financing the police force in Afghanistan. Most recently, in its non-paper of 3 February 2006, the Commission justified using Article 181a on the grounds that it was necessary to cover certain internal activities with an external dimension such as higher education, energy and transport. All of those needs

¹ Council of the European Union, Opinion of the Legal Service N°8095/05

² European Parliament, Legal Opinion SJ-0809/05

³ 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

identified so far fall within the current framework of development co-operation and can be financed on the basis of article 179.

There is a clear lack of clarity about the actual need for Article 181a TEC as a legal basis and the European Parliament, the Member States and Civil Society have rightly understood this. In the face of the apparent willingness by Parliament and Council to accept a Development Co-operation Instrument based only on article 179, the Commission is now arguing that the concept of development be re-defined so as to ensure the **inclusion of a broad definition of development co-operation**.

However, the EC's development policy is very clearly defined within the treaty that has been ratified by all the Member States and it is further detailed within the European Consensus on development, recently adopted jointly by the three institutions. Nevertheless the Commission suggests that another definition of development, that would offer them more flexibility, should be reflected within the overall objective and principles of the Regulation. The Presidency explanatory note accompanying the new proposal follows the same rationale and proposes to broaden the definition of development co-operation to be "*more comprehensive to guarantee the continuation of the activities*". This would be legally and politically not acceptable.

Firstly, development co-operation has been defined in the EC Treaty as a specific Community area. The regulations are intended to reflect clear competences given to the Community through the Treaties. The Development Co-operation Instrument can only be based on the objectives and instruments assigned to it by the Treaty on European Union (art 179).

Secondly, development co-operation is internationally defined by the OECD and the OECD Development Assistance Committee of which all EU Member States are a member, as well as the European Commission.

Additionally, development co-operation is politically relevant and has enabled the EU to become a major player in the fight against poverty. Redefining development would jeopardise Europe's ability to contribute meaningfully and transparently to the achievement of the Millennium Development Goals.

A real role for the legislative authority on the definition of the geographic and thematic priorities

The new Presidency proposal suggests the inclusion of some references to the geographic and thematic priorities within the body of the Development Cooperation Instrument. It then suggests that these geographic and thematic programmes will be further defined by the Commission through strategy papers and multi-annual indicative programmes with some light Council oversight. This is **far from the current situation in which the legislative authority co-decides on a number of geographic and thematic regulations**.

The Parliament proposal for adopting policy-setting regulations separately would allow the European Parliament and the Council to debate openly the main regional and thematic approach of EC development policy. In addition, Parliament's proposal on a "call back" provision would enable the legislative authority to ensure that there is consistency of individual country, regional and thematic strategies with the legal provisions and priorities that have been set.

The public would be able to follow these discussions and to identify their outcomes very clearly with reference to the annual budget and priority setting within the geographic and thematic regulations. This level of **transparency** is necessary and the Commission and Council should want the clear endorsement and involvement of the European Parliament through policy-setting regulations, as this increases **accountability** to citizens, which is necessary at a time when citizens are questioning the need for the European Union. The Presidency proposal to include certain elements of the thematic and geographic programmes within the DCI would prevent democratic debate and involvement on the main guidelines of content of those programmes.

It would also lead to lack of flexibility and future stagnation, as an overall broad regulation will be very difficult to change. Having implementation oriented policy setting regulations will allow the EU institutions to reflect and respond to changing circumstances within a flexible but democratic set of procedures. The adoption of separate policy-setting regulations would result in **much greater flexibility and efficiency** than the adoption of geographic and thematic priorities within the DCI. Indeed, the European Parliament proposal would allow for re-discussion of specific thematic or geographic policy-setting regulations every time this would be necessary, without reopening a whole debate on the administrative arrangements of the whole DCI or on other geographic or thematic priorities. Previous experiences have shown that the need to re-discuss some geographic or thematic priorities often arises. The Presidency draft proposal to include a summary of the geographic and thematic priorities within the DCI would subject administrative arrangements to modification by the legislative authority every time a policy priority needed to be redefined. It would also make the full range of geographical and thematic policy domains subject to re-negotiation by the legislative authority whenever a policy priority required review. This would be a highly inefficient process.

The Human Rights Instrument

The European Commission is pressing the European Parliament to agree to the Presidency proposal even though it does not give the elected body a real role in setting geographic and thematic priorities of EC aid. The Commission further threatens to block Parliament's proposal for a Human Rights Instrument unless it accepts giving up part of its power on the other instruments (as suggested in the Presidency proposal). These bargaining games on the Human Rights Instrument do not demonstrate a commitment from the Commission to an effective instrument that aims at the advancement of Human Rights. The Commission should support the proposal to set up the new Human Rights instrument without delay and without linking it to the negotiations on the Development Co-operation Instrument for the MDGs. The European Parliament should consider halting any negotiations on any of the instruments until the Commission has presented the Human Rights Instrument. It is wrong that Human Rights is being used as a bargaining chip in defining the scope and content of the new instruments.

For these reasons we recommend the adoption of a Development Cooperation Instrument:

- **Covering developing countries only**
- **Based on the legal base for development cooperation only (art 179)**
- **Guided by the definition of development cooperation included in the EC Treaty**
- **Providing for the adoption of separate policy-setting regulation establishing the geographic and thematic priorities of EC aid**
- **Providing 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.**