

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision 2009/0060B(COD) procedure) Regulation	Procedure completed
External actions: financing instrument for the promotion of democracy and human rights worldwide Amending Regulation (EC) No 1889/2006 2006/0116(COD) See also 2009/0059(COD) See also 2009/0060A(COD) See also 2010/0059(COD) Subject 6.10.08 Fundamental freedoms, human rights, democracy in general	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	CODE Parliament delegation to Conciliation Committee		15/02/2011
		PPE GÁL Kinga	
	Former committee responsible		
	AFET Foreign Affairs		22/10/2009
		PPE GÁL Kinga	22/10/2009
		Verts/ALE LOCHBIHLER Barbara	
	AFET Foreign Affairs		13/01/2011
		PPE GÁL Kinga	13/01/2011
		Verts/ALE LOCHBIHLER Barbara	
	Former committee for opinion		
	DEVE Development	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Education, Youth, Culture and Sport	3128	28/11/2011
	Agriculture and Fisheries	3108	19/07/2011
	Competitiveness (Internal Market, Industry, Research and Space)	3057	10/12/2010
European Commission	Commission DG	Commissioner	
	External Relations	ASHTON Catherine	

Key events			
21/04/2009	Legislative proposal published	COM(2009)0194	Summary
17/09/2009	Committee referral announced in Parliament, 1st reading		
01/06/2010	Vote in committee, 1st reading		Summary
08/06/2010	Committee report tabled for plenary, 1st reading	A7-0188/2010	
20/10/2010	Debate in Parliament		
21/10/2010	Results of vote in Parliament		
21/10/2010	Decision by Parliament, 1st reading	T7-0380/2010	Summary
10/12/2010	Council position published	16446/1/2010	Summary
16/12/2010	Committee referral announced in Parliament, 2nd reading		
26/01/2011	Vote in committee, 2nd reading		Summary
28/01/2011	Committee recommendation tabled for plenary, 2nd reading	A7-0014/2011	
03/02/2011	Debate in Parliament		
03/02/2011	Decision by Parliament, 2nd reading	T7-0031/2011	Summary
19/07/2011	Parliament's amendments rejected by Council		
06/09/2011	Formal meeting of Conciliation Committee		
31/10/2011	Final decision by Conciliation Committee		
31/10/2011	Joint text approved by Conciliation Committee co-chairs	00058/2011	
24/11/2011	Report tabled for plenary, 3rd reading	A7-0404/2011	
28/11/2011	Decision by Council, 3rd reading		
30/11/2011	Debate in Parliament		
01/12/2011	Decision by Parliament, 3rd reading	T7-0534/2011	Summary
13/12/2011	Final act signed		
13/12/2011	End of procedure in Parliament		
30/12/2011	Final act published in Official Journal		

Technical information	
Procedure reference	2009/0060B(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation

	Amending Regulation (EC) No 1889/2006 2006/0116(COD) See also 2009/0059(COD) See also 2009/0060A(COD) See also 2010/0059(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 209-p1; Treaty on the Functioning of the EU TFEU 212
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	CODE/7/05312

Documentation gateway

Legislative proposal	COM(2009)0194	21/04/2009	EC	Summary
Committee draft report	PE430.281	10/11/2009	EP	
Committee report tabled for plenary, 1st reading/single reading	A7-0188/2010	08/06/2010	EP	
Text adopted by Parliament, 1st reading/single reading	T7-0380/2010	21/10/2010	EP	Summary
Commission response to text adopted in plenary	SP(2010)8657/2	09/12/2010	EC	
Council position	16446/1/2010	10/12/2010	CSL	Summary
Commission communication on Council's position	COM(2010)0789	13/12/2010	EC	Summary
Committee draft report	PE456.703	14/01/2011	EP	
Committee recommendation tabled for plenary, 2nd reading	A7-0014/2011	28/01/2011	EP	
Text adopted by Parliament, 2nd reading	T7-0031/2011	03/02/2011	EP	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2011)0170	01/04/2011	EC	Summary
Joint text approved by Conciliation Committee co-chairs	00058/2011	31/10/2011	CSL/EP	
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading	A7-0404/2011	24/11/2011	EP	
Text adopted by Parliament, 3rd reading	T7-0534/2011	01/12/2011	EP	Summary
Draft final act	00058/2011/LEX	13/12/2011	CSL	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Regulation 2011/1340](#)
[OJ L 347 30.12.2011, p. 0032](#) Summary

External actions: financing instrument for the promotion of democracy and human rights worldwide

PURPOSE: to amend Regulation (EC) No 1889/2006 establishing a European Instrument for Democracy and Human Rights (EIDHR) in order to provide, on a case by case basis, eligibility of taxes for Community financing.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

CONTENT: the various Community financial instruments for external cooperation contain inconsistencies regarding the eligibility for Community financing of costs related to taxes, duties and other charges.

The Development Cooperation Instrument ([DCI](#)) and the European Instrument for Democracy and Human Rights ([EIDHR](#)) are the only ones not to provide for an exception to the principle of the non-eligibility of such costs for funding. The other instruments lay down that Community 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 their being financed in the interests of proper implementation of programmes and projects.

Such flexibility is essential for certain recurring situations where deadlock occurs because exemption mechanisms are absent or impractical (owing, for example, to the extreme complexity of procedures in the beneficiary country). In these situations, the rigid formulation of the DCI and EIDHR instruments may make the action financed by external aid extremely difficult.

Note also that with the current wording the prohibition on financing for the payment of taxes concerns only those paid "in beneficiary countries", which adds difficulty of interpretation to the problem of eligibility (especially in the case of regional projects). Another example is the levying of local taxes (equivalent to VAT) which cannot be recovered because of a lack of machinery for relief and then have to be borne by the contractor because of the strict prohibition on covering taxes.

In view of the above and of the evolving nature of tax rules in the beneficiary countries, it is essential to preserve sufficient flexibility to enable authorising officers to determine, on a case-by-case basis, whether there is need to accept the eligibility of taxes for Community financing under the EIDHR and DCI, as they may do for other instruments of EC external assistance, where such taxes are lawful.

Therefore it is proposed to align the relevant provisions of both these instruments as a consequence.

It should be noted that for reasons of a legal nature, it is provided that the European Parliament should give a separate opinion on this proposal amending the EIDHR and on the parallel proposal [amending the DCI](#).

External actions: financing instrument for the promotion of democracy and human rights worldwide

The Committee on Foreign Affairs adopted the report by Kinga GAL (EPP, HU) and Barbara LOCHBIHLER (Greens/EFA, DE) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation and Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Scope and title: this proposal is intended to amend Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide. The committee deleted references to Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation. It stated that the original proposal amended both Regulation (EC) No 1905/2006 and Regulation (EC) No 1889/2006 would fall into the competence of two different committees within the European Parliament. It has therefore been requested that the proposal be split into two different regulations, one for each financing instrument. References to Regulation (EC) No 1905/2006 are therefore deleted.

Comitology: the report contains amendments introducing the procedure for delegated acts. As stipulated under Article 290 of the Lisbon Treaty on the power of delegation, these amendments set out the objectives, content, scope and duration of the delegation of power, as well as the conditions to which the delegation is subject. A new recital states that the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of strategy papers, as those strategy papers supplement Regulation (EC) No 1889/2006 and are of general application. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

External actions: financing instrument for the promotion of democracy and human rights worldwide

The European Parliament adopted by 577 votes to 17, with 18 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation and Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

The Parliament adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) amending the Commission's proposal as follows:

Splitting of the proposal: the European Commission had proposed an amendment that is identical in both Regulation (EC) No 1905/2006 (DCI

Regulation) and Regulation (EC) No 1889/2006 (EIDHR Regulation). Parliament called for the Commission's proposal to be split into two distinct legislative proposals ([COD/2009/0060A](#) et [COD/2009/0060B](#)), one for each financial instrument. This is why the plenary proposes a series of amendments that delete references to Regulation (EC) No 1905/2006 in relation to the present proposal.

Delegated acts: following the entry into force of the Lisbon Treaty, the European Parliament co-decides with the Council on virtually all legislation. This needs to be reflected in the area of the implementation of external cooperation financial instruments. As a result, strategy documents, annual action programmes, as well as their revisions or extensions, have to be adopted by means of delegated acts, giving the European Parliament a de facto right of veto, permitting it to require that the Commission presents amended proposals. A new comitology procedure has been established for this purpose (Article 17(a)).

Informing Parliament about actions the cost of which exceeds a certain amount: the plenary asks that where the cost of a measure is equal to or exceeds EUR 3 000 000, the Commission shall adopt it taking into account the opinions of the European Parliament and of the Council. However, for Special Measures costing below EUR 3 000 000, the Commission shall send the measures to the European Parliament and to the Council for information within 10 working days of adopting its decision.

Evaluation: the Commission shall send its evaluation reports to the European Parliament and to the Council for information. The results shall feed back into programme design and resource allocation.

External actions: financing instrument for the promotion of democracy and human rights worldwide

The Council adopted its position at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

In its opinion, the Council recalled that the instrument for the promotion of democracy and human rights worldwide (EIDHR) is one of only two EU financial instruments for external action not providing for an exception to the principle of the non-eligibility for EU funding of costs related to taxes, duties and other charges. The Development Cooperation Instrument (DCI) is the other case in point. All the other EU financial instruments for external action lay down that EU support may not be used to finance such costs in principle, thus allowing for flexibility on a case-by-case basis, where appropriate, in the interests of proper implementation of programmes and projects.

The objective of the Commission proposal is to align the relevant provision of this instrument on the other instruments, by adding the words "in principle" in Article 13, paragraph 6.

European Parliament amendments: the Council had no difficulties whatsoever with the single change suggested by the Commission in its initial proposal with a view to harmonise relevant provisions in existing financial instruments. The Council also accepted three rather technical amendments adopted by the European Parliament, for the sake of clarity and accuracy.

In particular, the Council agreed to the splitting of the initial proposal into two in order to reflect that two distinct instruments were concerned: the modification of the financing instrument for the promotion of democracy and human rights worldwide and the [modification of the financial instrument of the Development Cooperation Instrument](#)(DCI).

The Council has not been able, however, to accept those amendments adopted by the European Parliament which introduce the application of the delegated acts procedure (Article 290 TFEU) for the adoption of multi-annual cooperation programmes and strategy papers. The Council believes that the multi-annual cooperation programmes, not being legally binding acts, do not constitute acts of general application, supplementing or amending the basic act. They constitute implementing measures within the meaning of Article 291 TFEU.

In conclusion, while the proposal of the Commission did not present any difficulty to the Council, the Council considers that its position at first reading is a balanced compromise and calls on the European Parliament to go along with this text in order to preserve the spirit and objective of the initial proposal, i.e. to ensure the consistency of the EU financial instruments for external action and to allow minimal but necessary flexibility in their implementation.

External actions: financing instrument for the promotion of democracy and human rights worldwide

In its communication to the European Parliament concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council amending regulation (EC) n° 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, the Commission states that it 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.

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 the DCI to include bananas accompanying measures).

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.

The Commission can accept the Council position at first reading.

External actions: financing instrument for the promotion of democracy and human rights worldwide

The Committee on Foreign Affairs adopted the recommendation for second reading in the joint report by Kinga GÁL (EPP, HU) and Barbara LOCHBIHLER (Greens/EFA, DE) on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

It recommended that the European Parliament adopts its position at second reading under the ordinary legislative procedure, amending the Council position at first reading as follows:

Delegated acts: following the entry into force of the Lisbon Treaty, the European Parliament is now fully recognised as co-legislator alongside the Council on virtually all legislation. Members consider that this should be reflected in the area of the implementation of external cooperation financial instruments.

During the first reading in October 2010, Parliament expressed its favour for the application of the "delegated acts" procedure for the financing instruments for external assistance.

The delegated acts procedure significantly strengthens Parliament's powers: Parliament's veto right allows it to block a draft measure it objects against, and requires the Commission to present an amended proposal.

Faced with the rejection of the Parliament's position by the Council, Members recommend representing, at second reading, the requests formulated at first reading:

- the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of strategy papers, as those strategy papers supplement Regulation (EC) No 1889/2006 and are of general application;
- annual action programmes, and any revisions or extensions thereof, to be adopted by the Commission taking into account the opinions of the European Parliament and of the Council;
- all measures of which the cost is equal to or exceeds EUR 3 000 000 to be adopted by the Commission taking into account the opinions of the European Parliament and of the Council;
- special measures costing below EUR 3 000 000 to be sent, by the Commission, to the European Parliament and to the Council within a given time limit.

Other amendments focus on the objectives, scope and duration of the delegation of power, as well as the conditions to be respected by the delegations.

External actions: financing instrument for the promotion of democracy and human rights worldwide

The European Parliament adopted by 586 votes to 33, with 8 abstentions, a legislative resolution on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

It adopted its position at second reading under the ordinary legislative procedure.

The amendments concern in particular the issue of delegated acts and may be summarised as follows:

Following the entry into force of the Lisbon Treaty, the European Parliament is now fully recognised as co-legislator alongside the Council on virtually all legislation. Parliament considers that this should be reflected in the area of the implementation of external cooperation financial instruments. During the first reading in October 2010, Parliament expressed its favour for the application of the "delegated acts" procedure for the financing instruments for external assistance. This procedure significantly strengthens Parliament's powers: Parliament's veto right allows it to block a draft measure it objects against, and requires the Commission to present an amended proposal.

Consequently, Parliament calls for:

- the Commission to be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of strategy papers, as those strategy papers supplement Regulation (EC) No 1889/2006 and are of general application;
- annual action programmes, and any revisions or extensions thereof, to be adopted by the Commission taking into account the opinions of the European Parliament and of the Council;
- all measures of which the cost is equal to or exceeds EUR 3 000 000 to be adopted by the Commission taking into account the opinions of the European Parliament and of the Council;
- special measures costing below EUR 3 000 000 to be sent, by the Commission, to the European Parliament and to the Council within a given time limit.

Other amendments focus on the objectives, scope and duration of the delegation of power, as well as the conditions to be respected by the delegations

External actions: financing instrument for the promotion of democracy and human rights worldwide

Pursuant to Article 294(7) (c) of the Treaty on the Functioning of the European Union, the European Commission delivers an opinion on the amendments proposed by the European Parliament at second reading in relation to the Council's position regarding the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1889/2006 establishing a financial instrument for the promotion of democracy and human rights worldwide.

In its opinion, the Commission indicates that it is unable to accept the amendments relating to delegating actions and comitology issues. On the other hand, the Commission accepts an amendment introduced by the European Parliament the purpose of which is for a mid-term revision, already accepted by the Council in first reading.

The discussions with the co-legislators shall continue after the second reading, in order to work on a consensual solution preferably giving EP substantive scrutiny rights for the remainder of the current Multiannual Programming Period and leaving options open for the next one, including the possibility of having recourse to delegated acts while fully respecting the criteria established in Article 290 TFEU.

External actions: financing instrument for the promotion of democracy and human rights worldwide

The European Parliament adopted, by 579 votes to 34, with 24 abstentions, at third reading under the ordinary legislative procedure, a legislative resolution on the joint text approved by the Conciliation Committee for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

The European Parliament approves the joint text.

It should be noted that the resolution is accompanied by a statement by the European Parliament and the Council which was confirmed by the Parliament in plenary:

Statement by the European Parliament and the Council on the use of Delegated Acts in the future Multiannual Financial Framework (MFF) 2014-2020: the two institutions take note of the Commission Communication [A Budget for Europe 2020](#) , in particular in relation to the proposed use of delegated acts in the future external financing instruments and await legislative proposals, which will be duly considered. The document states that the future legal bases for the different instruments will propose the extensive use of delegated acts to allow for more flexibility in the management of the policies during the financing period, while respecting the prerogatives of the two branches of legislator. It is considered that democratic scrutiny of external aid must be improved. This could be achieved by the use of delegated acts in accordance with Article 290 of the Treaty for certain aspects of programmes, not only placing the co-legislators on an equal footing but also ensuring more flexibility in programming.

External actions: financing instrument for the promotion of democracy and human rights worldwide

PURPOSE: to amend Regulation (EC) No 1889/2006 establishing a European Instrument for Democracy and Human Rights ([EIDHR](#)) in order to provide, on a case by case basis, eligibility of taxes for Community financing.

LEGISLATIVE ACT: Regulation (EU) No 1340/2011 of the European Parliament and of the Council amending Regulation (EC) No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

CONTENT: in order to improve the effectiveness and transparency of the Community's external assistance, a new framework for planning and delivering assistance was established in 2006 which included a series of regulations including Regulation (EC) No 1889/2006 on the promotion of democracy and human rights worldwide.

In implementing those Regulations inconsistencies emerged regarding exceptions to the principle of non-eligibility for Union financing of costs related to taxes, duties and other charges. This is why the European Parliament and the Council decided, following the agreement they reached in conciliation, to amend the relevant provisions of the Regulation in order to align it with the other instruments.

The objective is therefore to provide for a certain degree of flexibility, as is the case for the other financial instruments applicable to the Community's external cooperation, regarding the eligibility for Community financing of costs related to taxes, duties and other charges, which would not be authorised in principle.

ENTRY INTO FORCE: 31/12/2011.

DELEGATED ACTS: a certain number of amendments were the subject of intense debate in the Conciliation Committee on the question of the scope of the powers conferred on the Commission in the context of the implementation of this programme. In this regard, a bilateral declaration was inserted in the amended Regulation stipulating that as of the next programming period for the future external assistance financial instruments delegated acts would be used in order to enable the more flexible management of policies over the financing period, while respecting the prerogatives of the two branches of legislator (Parliament and the Council). The Commission specifically states that, with a view to the improved democratic scrutiny of external assistance, the use of delegated acts in accordance with Article 290 of the Treaty for certain aspects of programmes, would not only place the co-legislators on an equal footing but would also ensure more flexibility in programming (on this point, please refer to the Commission's communication entitled [A budget for Europe 2020](#)).