



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.2000
COM(2000) 856 final

Proposal for a

COUNCIL DECISION

**concluding the consultation procedure opened with Haiti under Article 96 of the
ACP-EC Partnership Agreement**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Following several postponements, the general elections in Haiti were eventually held on 21 May (first round) and 9 July (second round) for the purpose of choosing 19 senators, 83 members of parliament, 133 mayors and 7124 local assembly members. The Organisation of American States (OAS) was called on by the international community to observe the elections and, although first round was calm and the turnout was high, it noted a number of irregularities and instances of fraud, plus use of an illegal method of calculating the votes for Senate candidates.

It was the issue of the Senate vote that triggered the current crisis; the Provisional Electoral Council refused to apply the method for calculating the Senate vote that was laid down in the electoral law and the constitution, despite the representations of the OAS and the international community as a whole. According to the OAS, ten of the senators elected at the first round should have been subject to a second round. The beneficiary of this operation is the *Lafammi Lavallasi* party of ex-President Aristide, which obtained an overwhelming majority in the senate (18 of the 19 seats).

This refusal by the Haitian authorities to review the method of calculation, combined with accounts of fraud and intimidation in the OAS report, the flight of the President of the PEC and the resignation of two of the PEC's six members, undermined the credibility and legitimacy of the electoral process.

The EU declaration of 12 July 2000 noted this situation and drew the Haitian authorities' attention to the risk it ran of the EU's reviewing its policy on Haiti, particularly aid, if nothing was done to remedy the situation.

Failing a response, the EU Council decided on 2 August to invite the government of Haiti to enter into consultations under Article 96 of the Cotonou Agreement in order to review the situation in detail and find out how Haiti intended to comply with the essential elements of Article 9 of the Agreement, in particular the provisions on democratic principles and the rule of law. Consultations were held in Brussels on 26 September 2000.

In its provisional conclusions the EU noted the point of view of the Haitian authorities but regretted that they had not taken account of its remarks and concerns as to the legitimacy of the process.

The EU found that the essential elements laid down in Article 9 of the Partnership Agreement had not been observed and that consequently it would study appropriate measures to take under the Partnership Agreement, especially as regards development cooperation, while keeping in mind the serious social and political situation in the country and the importance of not penalising the Haitian people.

The provisional conclusions also stated that the EU would follow closely the development of the democratic process in Haiti in order to assess the situation on the basis, among other things, of the organisation of the forthcoming presidential elections

Following these consultations, and in view of the failure of the OAS's recent efforts to bring about a reconciliation, the Commission proposes that, in accordance with the provision on appropriate measures in Article 96(2)(c), cooperation policy be reviewed as follows:

- i. Cancellation of the second 8th EDF tranche of EUR 44.4 million.

Under the 8th EDF Haiti could claim a total allocation of EU 148 million. An initial tranche of EUR 103.6 million was notified in April 1997. In view of the progress made in committing the first tranche, the EDF Committee approved the allocation of the second tranche of EUR 44.4 million in January 2000. The Committee's favourable opinion was, however, conditional on implementation of a credible and honest electoral process. Given the unsatisfactory developments in the electoral process and the political situation overall, the Member of the Commission responsible for Development decided in March to temporarily delay notification of this tranche.

- ii. Suspension of the direct budget aid provided for under the 8th EDF and under the budget heading for food security.
- iii. Redirection of the remaining funds of the first 8th EDF tranche to projects that are of direct benefit to the Haitian people, to strengthen civil society and the private sector, and are liable to support democratisation and underpin the rule of law.
- iv. Preparations for 9th EDF programming by the Commission delegation in Haiti, which will consult the Haitian government if necessary. Unless otherwise decided by the Council acting on a Commission proposal, no allocation of resources will be notified while this decision is valid.

Apart from the cancellation of the second EDF tranche, these measures will expire on 31 December 2001.

The situation will be jointly reviewed by the Commission and the Council in six months' time, on the basis of which the measures referred to above may be adjusted, and, if appropriate, the Commission will make fresh proposals to the Council.

CONCLUSIONS

In view of the above and in accordance with Articles 9 and 96 of the Cotonou Agreement, which has been implemented in advance by Decision No 1/2000 of the ACP-EC Council of Ministers, the Commission proposes that the Council terminate the consultations with Haiti and adopt the attached proposal for a Decision.

Proposal for a

COUNCIL DECISION

**concluding the consultation procedure opened with Haiti under Article 96 of the
ACP-EC Partnership Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the ACP-EC Partnership Agreement, implemented in advance by Decision No 1/2000 of the ACP-EC Council of Ministers,

Having regard to the Internal Agreement on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement, as provisionally applied by decision of the representatives of the governments of the Member States on 18 September 2000, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The essential elements referred to in Article 9 of the ACP-EC Partnership Agreement have been breached by non-compliance with the Electoral Law.
- (2) In accordance with Article 96 of the ACP-EC Partnership Agreement, consultations took place with the ACP States and Haiti on 26 September 2000, on which occasion the Haitian authorities explained their position.
- (3) Democratic principles are still not upheld in Haiti.

HAS DECIDED AS FOLLOWS:

Article 1

The consultations opened with Haiti under Article 96 of the ACP-EC Partnership Agreement are hereby terminated.

Article 2

The measures described in the draft letter at annex shall be adopted as "appropriate measures" within the meaning of Article 96(2)(c) of the Agreement.

Apart from the cancellation of the second EDF tranche, these measures shall expire on 31 December 2001.

Article 3

This Decision shall enter into force on the day of its adoption.

It shall be published in the Official Journal.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft letter

Dear Sir,

The European Union attaches great importance to Article 9 of the Cotonou Agreement. Democratic principles and the rule of law, on which the ACP-EC partnership is founded, are essential elements of the Agreement and thus form the cornerstone of our relations.

The European Union has closely followed the electoral process in Haiti and is concerned about the irregularities mentioned in the report of the OAS observer mission, in particular the non-compliance with the Electoral Law in the election of senators after the first round.

This is why the European Union expressed disquiet about the electoral process in its declaration of 12 July and signalled that failure to take account of its concerns might have repercussions on cooperation with Haiti.

The EU Council therefore decided on 2 August to invite the Haitian authorities and the ACP States to enter into consultations with a view to a thorough examination of the situation and finding ways of remedying it.

The consultations were held in Brussels on 26 September and a number of crucial issues were discussed. The Haitian authorities, represented by His Excellency Mr Fritz Longchamps, Foreign Minister, explained their position and gave their analysis of the situation.

This exchange of views did not, however, lead to progress in finding a satisfactory solution to the issues raised by the Union, which then drafted provisional conclusions expressing regret that its concerns had not been taken into account and envisaging the possibility of appropriate measures under the Partnership Agreement. In its conclusions the Union also signalled its awareness of the serious social and economic situation in the country and the importance of not penalising the Haitian people.

Now, in the absence of any new developments and given the recent failure of the mission of the Organisation of American States led by the Assistant Secretary General, His Excellency Mr Luigi Einaudi, the EU Council has decided, in accordance with its provisional conclusions of 26 September, to terminate the consultations opened under Article 96 of the Cotonou Agreement and to take the following appropriate measures under Article 96(2)(c):

- i. Cancellation of the second 8th EDF tranche of EUR 44.4 million.
- ii. Suspension of direct budget aid. This mainly affects structural adjustment programmes and food security.
- iii. Redirection of the remaining funds of the first 8th EDF tranche to projects that are of direct benefit to the Haitian people, to strengthen civil society and the private sector, and are liable to support democratisation and underpin the rule of law.

- iv. Preparations for 9th EDF programming by the Commission delegation in Haiti, which will consult the Haitian government if necessary. Unless otherwise decided by the Council, acting on a Commission proposal, no allocation of resources shall be notified while this decision is valid.

Apart from the cancellation of the second EDF tranche, these measures shall expire on 31 December 2001.

The European Union wants to avoid penalising the Haitian people while signalling its disapproval of the failure to comply with basic democratic principles.

It will monitor closely developments in the democratic process, above all the presidential elections scheduled for the end of the year. It reiterates its readiness to engage in an enhanced political dialogue and contribute to the process of democratisation. To this end, it is ready to review its decision if there are encouraging developments but reserves the right to take further measures if there is no improvement.

For the Commission,

For the Council