



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.3.2001
COM(2001)117 final

Proposal for a

COUNCIL DECISION

concluding consultations with Fiji under Article 96 of the Cotonou Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 19 May 2000 the democratically elected People's Coalition Party Government of Fiji was deposed by a "coup d'état" under the leadership of George Speight. The 1997 Constitution was later revoked, a new President installed by the Great Council of Chiefs and an interim government led by Mr. Laisenia Qarase appointed by the new President. A Constitutional Review Committee has also been established to produce a new draft constitution.

In a statement of 19 May 2000, the European Union (EU) condemned the use of armed force against a democratically elected government, called for the immediate release of hostages and for the prompt return to democratic procedures and government within the terms of the Fijian constitution of 1997.

Following the coup, on the basis of a proposal by the Commission, the Commission and the Council, on 4 August, invited the ACP Party to hold consultations under Article 96 of the Cotonou Agreement with a view to assessing the situation in Fiji and, if necessary, remedying it. The consultations started with a meeting in Brussels on the 19th October 2000.

In this meeting, the EU deplored the deposing of former President Mara, the replacement of the democratic government and the repeal of the 1997 Constitution. It was also stated that the EU considers it essential that the rule of law be restored on the basis of a democratic constitution respecting the political rights of all Fijian citizens, a government be elected by free and fair elections, and that return to democratic legitimacy takes place without undue delay.

The EU noted the commitments made by Fiji's interim government, particularly as regards the timetable for constitutional revision, the holding of free and fair elections within 18 months and the bringing to justice of those responsible for the coup. It was noted, however, that the present Fijian government does not intend to reinstate the democratically elected parliament, the People's Coalition government or the 1997 Constitution.

The EU concluded that it will maintain regular contacts, and closely follow the developments in Fiji, in order to monitor the observance of the commitments made, and that it will, based on the consultations, consider any appropriate measures to be taken under the Cotonou Agreement.

In the light of these consultations the Commission has identified a series of benchmarks, the respect of which will entail, in a step-by-step approach, the successive releasing of the projects. The benchmarks are as follows:

1. Content of the constitution (a draft should be ready by end-June 2001). This draft must be based on nation-wide consultations and participation ensuring that the interests and concerns of all parts of the Fijian population have been taken into account. The draft constitution must guarantee equal respect of human, civil and political rights, as well as economic and social rights, of all Fijians.
2. Adoption and promulgation of the new constitution after popular referendum, not later than the end of December 2001.
3. Holding of general, free and fair elections not later than end of June 2002.

4. Judiciary procedures against George Speight and his associates. The judiciary procedures against Speight and other persons directly involved in the coup shall be accomplished and those persons charged with criminal offences in this context and still occupying important posts in Government and the Constitutional Review Commission must be replaced, thus adding credibility to the normalisation process.

In the light of the above the Commission proposes to conclude the consultations held under Article 96 of the ACP-EC Cotonou Agreement and to take the following appropriate measures, in the sense of Article 96,2(c), in support of Fiji's transition to democracy:

- The financing for the implementation of all investment projects under Fiji's 6th, 7th and 8th EDF National Indicative Programmes is suspended, except for the Rural Primary Education Micro-Project.
- In the case of programmes for which financing agreements have yet to be signed, a gradual and conditional approach will be applied on the basis of the achievements of the benchmarks identified. During the transition period measures in support of the restoration of constitutional democracy, the rule of law and good governance could also be adopted.
- Contributions to regional projects, operations of a humanitarian nature, trade co-operation and Trade related preferences will not be affected during the transition period.
- The primary responsibility for the preparation of the 9th EDF programming will be held by the Delegation of the Commission in Fiji, which will consult the authorities where necessary.
- The notification of the 9th EDF amount will be delayed until positive developments have taken place, in particular the adoption of a democratic constitution. The NIP will only be signed at the end of the transition process with a democratically legitimate government, after free and fair elections.

Apart from these measures a regular reassessment of the political situation in Fiji will be done jointly by the Council and the Commission. The European Union will closely follow developments and monitor the transition process in Fiji. It emphasises that the full co-operation of the Fijian authorities is vital and reiterates its readiness to maintain political dialogue with them. In this context, it reserves the right to take additional measures if necessary.

CONCLUSION

In the light of the above and pursuant to Articles 9 and 96 of the Cotonou Agreement, as applied in anticipation by decision 1/2000 of the ACP-EC Council of Ministers, the Commission proposes that the Council conclude the consultations with Fiji and take the measures set out in the draft letter annexed to the accompanying draft Council Decision.

Proposal for a
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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the ACP-CE Cotonou Agreement as already put into anticipated application by decision 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 put into provisional application by decision of the representatives of the governments of the Member states of 18/09/2000, and, in particular, Article 3 thereof,

Having regard to the proposal from the Commission,¹

Whereas:

- (1) The essential elements cited in Article 9 of the ACP-EC Cotonou Agreement have been violated with the unconstitutional replacement of the democratically elected Government of Fiji and the repeal of the 1997 Constitution,
- (2) Consultations under Article 96 of the ACP-EC Cotonou Agreement were held on 19 October 2000 with the ACP countries and Fiji, at which the Fijian authorities explained their point of view and made specific commitments particularly as regards the timetable for constitutional revision, the holding of free and fair elections before the end of June 2002 and the bringing to justice of those responsible for the 19th May coup,
- (3) Respect for democratic principles has yet to be restored in Fiji,

HAS DECIDED AS FOLLOWS:

Article 1

Consultations with Fiji under Article 96,2(c) of the ACP-EC Cotonou Agreement are hereby concluded.

¹ OJ C ...

Article 2

The measures specified in the annexed draft letter are hereby adopted as appropriate measures within the meaning of Article 96,2(c) ACP-EC Cotonou Agreement.

The measures shall expire on 30 September 2002.

Article 3

This Decision takes effect on the day of its adoption.

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft Letter

Sir,

The European Union attaches the utmost importance to the provisions of Article 9 of the ACP-EC Cotonou Agreement. As essential elements of the Partnership Agreement, respect for human rights, democratic institutions and the rule of law are the basis of our relations.

Thus, the European Union has condemned the 19 May 2000 coup and has expressed its deep concern for the political events in Fiji since that date, deploring the deposing of Fiji's President Mara, the unconstitutional replacement of the democratically elected government and the repeal of the 1997 Constitution.

The Council of the European Union therefore decided, on 4 August 2000, to invite the authorities of Fiji and the ACP countries to hold consultations with a view to assessing the situation in detail and remedying it.

These consultations took place in Brussels on 19 October 2000. A number of key issues were addressed, and the Fijian authorities represented by Mr. Kaliopate Tavola, Minister of Foreign Affairs, External Trade and Sugar, of the Interim Government of Fiji presented their point of view and made a series of commitments concerning a timetable for constitutional revision, the holding of free, democratic elections within 18 months and the bringing to justice of those responsible for the coup.

A series of benchmarks are defined, the respect of which will entail, in a step-by-step approach, the successive releasing of the projects. The benchmarks are as follows:

- Content of the constitution. This draft must be based on nation-wide consultations and participation ensuring that the interests and concerns of all parts of the Fijian population have been taken into account. The draft constitution must guarantee equal respect of human, civil and political rights, as well as economic and social rights, of all Fijians.
- Adoption and promulgation of the new constitution after popular referendum, not later than the end of December 2001.
- Holding of general, free and fair elections not later than end of June 2002.
- Judiciary procedures against George Speight and his associates. The judiciary procedures against Speight and other persons directly involved in the coup shall be accomplished and those persons charged with criminal offences in this context and still occupying important posts in Government and the Constitutional Review Commission must be replaced, thus adding credibility to the normalisation process.

In the light of the above the European Community and its Member States have decided to conclude the consultations held under Article 96 of the ACP-EC Cotonou Agreement. As respect for democratic principles has yet to be restored in Fiji, the Community has decided to take the following appropriate measures, in the sense of Article 96,2(c), in support of Fiji's transition to democracy:

- The financing for the implementation of all investment projects under Fiji's 6th, 7th and 8th EDF National Indicative Programmes is suspended, except for the Rural Primary Education Micro-Project.
- In the case of programmes for which financing agreements have yet to be signed, a gradual and conditional approach will be applied on the basis of the achievements of the benchmarks identified. During the transition period measures in support of the restoration of constitutional democracy, the rule of law and good governance could also be adopted.
- Contributions to regional projects, operations of a humanitarian nature, Trade co-operation and Trade related preferences will not be affected during the transition period.
- The primary responsibility for the preparation of the 9th EDF Programming will be held by the Delegation of the Commission in Fiji that will consult the authorities where necessary.
- The notification of the 9th EDF amount will be delayed until positive developments have taken place, in particular the adoption of a democratic constitution. The NIP will only be signed at the end of the transition process with a democratically legitimate government, after free and fair elections.

These measures shall expire on 30 September 2002.

The European Union will closely follow developments and monitor the transition process in Fiji. It emphasises that the full co-operation of the Fijian authorities is vital and reiterates its readiness to maintain political dialogue with them. In this context, it reserves the right to take additional measures if necessary.

For the Commission

For the Council