



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

concluding consultations with Côte d'Ivoire under Article 96 of the Cotonou Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On 22 January 2001, the European Union opened consultations with Côte d'Ivoire under Article 96 of the Cotonou Agreement, on account of the Ivorian authorities' failure to fulfil certain undertakings given as part of the preceding consultations under Article 366a of the Lomé Convention IVa, and in particular because:

- the Presidential and parliamentary elections held during the transition period were not sufficiently open;
- the transition to democracy was marked by acts of violence and atrocities against the civilian population.

These facts are incompatible with the essential elements of the Cotonou Agreement, as defined in Article 9(2).

2. According to the conclusions reached by the Presidency and the Commission following the meeting on 15 February,¹ the European Union was pleased to note the Ivorian authorities' willingness to remedy the problems and to do all within their power to ensure respect for the rule of law, human rights and democratic principles.

The Presidency took note of the authorities' commitment to:

" - ensure that the political system is opened to all shades of opinion, in particular by guaranteeing that the local elections are open to all political parties, and by ensuring the independence and neutrality of the judicial bodies;

- make the "national reconciliation committee" an active and efficient structure for dealing with the country's recent inter-community problems, which has the necessary operational resources, and whose recommendations are systematically followed up by the government;

- give priority to a full and transparent investigation into the atrocities committed during the transitional period, including under the military regime;

- guarantee the neutrality of the armed forces and their respect for human rights;

- guarantee the independence and neutrality of the judiciary, notably in the appointment of the principal judicial authorities;

- guarantee freedom of expression, and in particular freedom of the press;

- publicly condemn expressions of xenophobia and adapt administrative procedures relating to citizenship and residence issues, in order to improve the situation of foreign residents of Côte d'Ivoire in this regard;

- resume talks with all political parties."

In their conclusions, the Presidency and the Commission also stated that "the Presidency and the Commission will engage in intensive dialogue with the Ivorian authorities in Abidjan over a period of three months (...) on the various points raised. At the end of this period, an

¹ Council Secretariat General, Doc. No 36/01 ACP

assessment will be made of the situation on the basis of which the consultations will be closed and the Union will decide on appropriate measures."

3. This process of regular and intensive dialogue in Abidjan is now completed. It focused on a series of measures intended to fulfil the undertakings given. Following the dialogue, an evaluation of the implementation of those undertakings was drawn up by the Presidency and the Commission's local representatives in cooperation with France and Belgium.²

According to this report, the Ivorian authorities have taken measures which are both significant and encouraging in relation to certain undertakings. In particular, note should be taken that:

- local elections were held which were open to all political parties;
- a dialogue was launched including all political parties;
- a national debate was initiated on national reconciliation and on the operating resources to be made available to the National Reconciliation Committee;
- legal proceedings were launched concerning human rights violations in the wake of the Presidential election (October 2000);
- a National Identification Office was established and began work; its mission includes a mandate to make the procedures for renewing residence papers more flexible;
- unauthorised roadblocks set up by the police have been dismantled;
- all political parties have been granted free access to the State-run media.

However, the following points continue to give cause for concern:

Opening up the political system and national reconciliation. The political system cannot be judged to be open to all shades of political opinion as long as dialogue with all the significant political forces to emerge from the local elections has not yet led to the implementation of practical measures by the authorities. For the sake of national reconciliation, it is important that the Ministerial tours, the Grand Bassam workshop (17-19 April) and the National Forum produce both political guidelines and practical measures.

Judicial investigation into the atrocities carried out during and immediately following the transition period, since when the police are no longer above the law. Systematic inquiries must be made into the atrocities committed around the October and December 2000 elections, followed up with legal proceedings, to ensure that those responsible do not go unpunished. The Ivorian authorities should take into account the reports which emerged from the international investigations carried out by the UN, Human Rights Watch, Amnesty International, Reporters Sans Frontières and the International Federation of Human Rights.

Neutrality of the highest legal authorities. Organic laws dealing with the organisation and operation of the Constitutional Council and High Court of Justice have been adopted by the National Assembly. Similar texts have not yet been adopted for the Court of Appeal, the

² *Progress report on the consultations with Côte d'Ivoire, 27 April 2001/16 May 2001.*

Revenue Court or the Council of State. Guarantees are required that the appointment of judges will comply fully with the principles of independence and neutrality.

Recognition of the rights of foreign communities. The commitment to "publicly condemn expressions of xenophobia and to adapt administrative procedures relating to citizenship and residence issues, in order to improve the situation of foreign residents of Côte d'Ivoire" needs to be backed up by further practical measures and confirmed by an official policy statement.

The Commission believes that, in general terms, the opening up of the political process to all shades of opinion and to all communities residing in the country is now underway. This process must be pursued and consolidated, so as to reduce tension between communities and enhance the stability of what is still a politically fragile situation. Both are essential conditions if sustainable development is to resume. The Commission therefore proposes to support this process by gradually resuming Community cooperation on a conditional basis.

In the wake of the consultations, the Commission proposes, by way of appropriate steps within the meaning of Article 96(2)(c) of the Cotonou Agreement, to resume cooperation gradually, while linking it with the actual implementation of the undertakings made by the Ivorian authorities at the meeting on 15 February 2001, as follows.

i. Initially, renewed cooperation will focus on social themes, institutional support and the private sector. Support for measures carried out by the authorities in fulfilment of their undertakings are eligible for consideration. The Ivorian authorities will be notified of the allocation of resources under the 9th EDF. Preparations for the use of resources covered by the Commission Decisions of 24 July and 27 December 2000 concerning STABEX transfers for the 1998 and 1999 years of application³ will be launched.

ii. Once new and substantial progress has been made towards fulfilling undertakings, over and above that already achieved (the situation should be reviewed in September 2001), aid will be rolled out progressively and new measures may be implemented under STABEX 1999.

iii. Once all undertakings have been fulfilled (a further situation review should be scheduled for January 2002), full cooperation will be resumed. Among other things, this will include an agreement on cooperation strategy within the framework of the 9th EDF, together with a structural adjustment facility connected to a Poverty Reduction Strategy Paper (PRSP).

Progress with improving public management systems - in particular to bring them into line with the Memorandum of Understanding signed with the Ivorian state on 7 September 1999 - must go hand in hand with the implementation of cooperation policy.

Focused and intensive political dialogue with the Ivorian government must continue, to ensure that the government continues to pursue the restoration of political stability in Côte d'Ivoire, in line with the measures it has already taken to this end.

In the light of the above and pursuant to Articles 9 and 96 of the Cotonou Agreement, as applied in advance by Decision 1/2000 of the ACP-EC Council of Ministers, the Commission proposes that the Council conclude the consultations with Côte d'Ivoire and adopt the annexed Decision.

³ Unpublished.

Proposal for a

COUNCIL DECISION

concluding consultations with Côte d'Ivoire under Article 96 of the Cotonou Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000, as applied in advance 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 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,⁴

Whereas:

- (1) The essential elements cited in Article 9 of the Cotonou Agreement have been violated by the lack of openness of the Presidential and legislative elections held respectively in October and December 2000, and by the acts of violence and atrocities carried out against civilian populations throughout the period of democratic transition. In addition, the Ivorian authorities have failed to fulfil the undertakings they gave as part of the consultations held under Article 366a of the Lomé IVa Convention between January and June 2000.
- (2) Pursuant to Article 96 of the Cotonou Agreement, consultations were held on 15 February 2001 with the ACP countries and Côte d'Ivoire, at which the Ivorian authorities gave specific undertakings so as to remedy the problems set out by the European Union, to be implemented during a period of intensive dialogue lasting three months.
- (3) At the end of this period, a number of practical measures were found to have resulted from the above undertakings; nevertheless, certain important measures concerning the essential elements of the Cotonou Agreement have still not been adequately implemented in practice,

⁴ OJ C of , p. .

HAS DECIDED AS FOLLOWS:

Article 1

Consultations with Côte d'Ivoire pursuant to Article 96 of the Cotonou Agreement are hereby concluded.

Article 2

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

Article 3

This decision shall enter into force on the day it is adopted. It shall be valid for one year from the date of its adoption by Council.

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

Done at Brussels,

For the Council
The President

ANNEX

Draft letter

Dear Prime Minister,

The European Union places great importance on the provisions of Article 9 of the Cotonou Agreement. The ACP-EU partnership is founded on respect for human rights, democratic principles and the rule of law; these are essential elements of the above agreement, and thus form the basis for relations between us.

In this spirit, the European Union has followed closely the democratic transition in Côte d'Ivoire, especially with regard to the undertakings given by the Ivorian authorities as part of the February 2000 consultation process under Article 366a of the Lomé IVa Convention. In this respect, we are particularly concerned by the acts of violence and atrocities which have been carried out during this period, as well as by the lack of openness in the Presidential and legislative elections of October and December 2000.

In this context, on 22 January 2001 the European Union Council decided to invite the Côte d'Ivoire and ACP country authorities to open consultations with a view to examining in depth both the situation and the ways in which it might be remedied.

These consultations took place in Brussels on 15 February 2001. Several fundamental questions were addressed, and you were able to present the Ivorian authorities' point of view and their analysis of the situation. The European Union took note of your commitment to:

- ensure that the political system is opened to all shades of opinion, in particular by guaranteeing that the local elections are open to all political parties, and by ensuring the independence and neutrality of judicial bodies;
- make the "national reconciliation committee" an active and efficient structure for dealing with the country's recent inter-community problems, which has the necessary operational resources, and whose recommendations are systematically followed up by the government;
- give priority to a full and transparent investigation into the atrocities committed during the transitional period, including under the military regime;
- guarantee the neutrality of the armed forces and their respect for human rights;
- guarantee the independence and neutrality of the judiciary, notably in the appointment of the principal judicial authorities;
- guarantee freedom of expression, and in particular freedom of the press;
- publicly condemn expressions of xenophobia and adapt administrative procedures relating to citizenship and residence issues, in order to improve the situation of foreign residents of Côte d'Ivoire in this regard;
- resume talks with all political parties.

It was also agreed that an intensive dialogue would be held in Abidjan over a period of three months on the various points raised, and that the situation would be assessed at the end of this period.

This process of regular and intensive dialogue in Abidjan is now completed. It focused on a series of measures which you yourselves proposed could be implemented in order to fulfil the undertakings you had given.

This dialogue made clear that, in general terms, the process of opening up the political process to all shades of opinion and all communities is underway. A number of significant measures have been taken by the Ivorian authorities. In particular, we note that:

- local elections were held which were open to all political parties;
- a dialogue was launched including all political parties;
- a national debate was initiated on national reconciliation and on the operating resources to be made available to the National Reconciliation Committee;
- legal proceedings were launched concerning six cases of human rights violations in the wake of the Presidential election (October 2000);
- a National Identification Office was established and began work;
- unauthorised roadblocks set up by the police have been dismantled;
- all political parties have been granted free access to the State-run media.

These initiatives are incontrovertible evidence that a process is underway which will restore social and political stability to the country. However, the following points continue to give cause for concern:

- political guidelines and practical measures to promote national reconciliation are still eagerly awaited, in particular from the National Forum;
- while a dialogue including all political parties has been launched, there is no guarantee that it will last, and it has not yet led to any practical initiatives;
- the judges who will sit in the Ivorian high courts when they are set up must be appointed in compliance with the principles of independence and neutrality.
- there has been no systematic attempt to launch and/or accelerate investigations and legal proceedings concerning the atrocities carried out around the October and December 2000 polls.
- the commitment to "publicly condemn expressions of xenophobia and to adapt administrative procedures relating to citizenship and residence issues, in order to improve the situation of foreign residents of Côte d'Ivoire" still needs to be backed up by additional practical measures and confirmed by an official policy statement.

The undertakings given on 15 February should lead in due course to greater political stability, in particular by opening up the political process to all shades of opinion and all resident communities. While it would appear that this process has begun in certain areas, practical measures are still needed to ensure that it becomes an integral part of Ivorian political, economic and social life.

In the light of these undertakings, and the present assessment of their implementation, the European Community and its Member States are prepared to conclude the consultations under Article 96 of the Cotonou Agreement. Given that significant measures are still to be implemented as part of these undertakings, the European Union Council has decided to resume cooperation gradually and in moderation, and to adopt the following measures as appropriate steps within the meaning of Article 96(2)(c) of the Cotonou Agreement:

- i. Once the consultations are concluded, cooperation may resume. The initial disbursements will focus on social themes, institutional support and the private sector. Support for measures implemented by the authorities in fulfilment of their undertakings may be considered. You will be notified of the allocation of resources under the 9th EDF, and preparations for the use of resources covered by the Commission Decisions of 24 July and 27 December 2000 concerning STABEX transfers for the 1998 and 1999 years of application will be launched.

ii. Once new and substantial progress has been made towards fulfilling undertakings, over and above that already achieved (the situation should be reviewed in September 2001), aid will be rolled out progressively and new measures may be adopted under STABEX 1999.

iii. Once all undertakings are found to have been fulfilled (a further situation review should be scheduled for January 2002), full cooperation will be resumed. Among other things, this will include an agreement on cooperation strategy within the framework of the 9th EDF, together with a structural adjustment facility connected to a Poverty Reduction Strategy Paper (PRSP).

Progress towards improving public management systems, in particular to bring them into line with the Memorandum of Understanding signed with the Ivorian state on 7 September 1999, must go hand in hand with the implementation of cooperation policy.

The European Union will continue to follow the situation closely and monitor progress made with the process of national reconciliation. We are eager that focused and intensive dialogue with the Ivorian authorities should continue.