



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.6.2004
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Proposal for a

COUNCIL DECISION

concluding consultations with Guinea-Bissau under Article 96 of the Cotonou Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 19 January 2004 the European Union opened consultations with Guinea-Bissau under Article 96 of the Cotonou Agreement following the military coup of 14 September 2003.

This coup is incompatible with the essential elements specified in Article 9 of the Cotonou Agreement.

At the opening meeting of these consultations the European Union was pleased to note the undertakings given by Guinea-Bissau's representatives concerning the restoration of a constitutional order consistent with human rights, democratic principles and the rule of law, and the establishment of conditions conducive to the country's political stability and sustainable development.

The European Union takes note of a series of undertakings by the government of Guinea-Bissau, confirming:

- the government's transition programme, and in particular its plans for a general election;
- the progress towards a return to an independent judiciary and the restoration of civilian control over the armed forces.
- the adoption of measures to consolidate public finances.

In their conclusions, the European Union also stated that:

“The European Union will continue the dialogue to make sure that democracy and the rule of law are restored as quickly as possible in Guinea-Bissau, this being a prerequisite for the comprehensive normalisation of its cooperation ties with the country. These consultations will be conducted in the hope of helping establish a viable constitutional order offering Guinea-Bissau the stability it needs to make inroads into poverty, contribute to stability in the region and integrate itself further into the international economy.

On the basis of the monthly reports that Guinea-Bissau has pledged to provide on the implementation of the above undertakings, the European Union will monitor developments in the situation very closely. It will see that undertakings are honoured, especially those relating to the scheduled elections and the adoption of measures guaranteeing the transparency and democratic legitimacy of the elections, the implementation of the emergency programme, the progress towards the consolidation of public finances, and the return to an independent judiciary and the restoration of civilian control over the armed forces.

The nature and scope of any appropriate steps adopted pursuant to Article 96(2)(c) of the Cotonou Agreement at the end of the three-month period of dialogue and consultations on the ground will very much depend on whether and, if so, how the authorities of Guinea-Bissau honour their undertakings. It emphasises that the full cooperation of the authorities of Guinea-Bissau is crucial if it is to continue assisting this country's development efforts.”

This intensive dialogue has taken place in Guinea-Bissau. It was based on a list of measures to be taken with a view to honouring undertakings and on the monthly monitoring reports presented to the local representatives of the Presidency and the Commission. Following the

dialogue, an evaluation of the implementation of those undertakings was drawn up by the Presidency and the Commission's local representatives.

According to this report, Guinea-Bissau's authorities have taken measures which are both significant and encouraging in relation to certain undertakings, and in particular:

- the holding of a fair, free and transparent general election on 28 and 30 March 2004;
- confirmation of progress towards a return to an independent judiciary with the appointment of a public prosecutor and the election of the supreme court president.

There nevertheless remain issues of concern in particular, with regard to the consolidation of public finances:

- The public accounting system needs to be completely overhauled. Public finances are steadily worsening because a considerable percentage of government revenue, and in particular customs revenue, is not being properly collected.
- The government's finances remain a matter of great concern. A shortage of cash means that most officials are being paid with development partners' contributions to a UNDP-managed fund.
- Implementation of the emergency economic programme adopted by the transitional government must continue.
- The census of government employees now under way must continue.
- Corrective measures must be adopted in the matter of public finances, including audits of the financial control system, public procurement and government revenue.
- The repayment of Community budgetary support in the wake of the 2003 audit into the use of the programme's resources must go ahead.
- Following submission of the conclusions of the government auditors' 2003 report on government revenue, administrative and judicial proceedings should be initiated against officials of the government preceding the transition period who committed irregularities or fraud.

Overall, the European Union considers that progress is being made towards a return to constitutional rule. There remains some uncertainty as to how the government intends to consolidate public finances.

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 normalise relations and continue cooperation while monitoring, over a period of eighteen months, the progress made in the areas of public finances, the return to an independent judiciary, the restoration of civilian control over the armed forces and the pursuit of the electoral calendar with the presidential elections. This period could see six-monthly evaluations.

Close political dialogue must continue with Guinea-Bissau's government, to ensure that it keeps up its efforts to restore the rule of law and bring social and economic stability to Guinea-Bissau.

Should the authorities of Guinea-Bissau fail to honour their undertakings, the European Union reserves the right to take the appropriate measures. In particular, the European Commission could, at the end of the eighteen-month period referred to above, reallocate uncommitted financial resources allocated to Guinea-Bissau under the 9th EDF.

In the light of the above and pursuant to Articles 9 and 96 of the Cotonou Agreement, the Commission proposes that the Council conclude the consultations with Guinea-Bissau and adopt the annexed Decision.

Proposal for a
COUNCIL DECISION

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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 2000¹, and in particular article 96 thereof,

Having regard to the internal agreement on measures to be taken and procedures to be followed for the implementation of the ACP-EC²Partnership Agreement, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,³

Whereas:

- (1) The essential elements cited in Article 9 of the Cotonou Agreement were violated by the military coup of 14 September 2003 in Guinea-Bissau, as condemned by the European Union in a statement of 18 September 2003.
- (2) Pursuant to Article 96 of the Cotonou Agreement, consultations were held on 19 January 2004 with the ACP countries and Guinea-Bissau, at which Guinea-Bissau's authorities gave specific undertakings aimed at remedying the problems set out by the European Union and 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,

¹ JO L 317 of 15 Dec 2000, Page 3

² JO L 317 of 15 Dec 2000, Page 376

³ JO C of , Page

HAS DECIDED AS FOLLOWS:

Article 1

Consultations with the Republic of Guinea-Bissau 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 of its adoption.

It shall be valid for 18 months from the date of its adoption by Council.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft letter

Sir,

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, in its statement of 18 September 2003, roundly condemned the military coup of 14 September 2003.

The EU Council therefore decided on 19 December 2004 to invite Guinea-Bissau's authorities to enter into consultations with a view to a thorough examination of the situation and finding ways of remedying it.

These consultations took place in Brussels on 19 January 2004. Several fundamental questions were addressed, and the Prime Minister of the transitional government was able to present the point of view of Guinea-Bissau's authorities and their analysis of the situation. The European Union took note of the Prime Minister's commitments to:

- confirm the transition programme of the government of the Republic of Guinea-Bissau, and in particular its plans for a general election;
- adopt measures to consolidate public finances;
- confirm progress towards a return to an independent judiciary and the restoration of civilian control over the armed forces.

It was also agreed that an intensive dialogue would be held in Guinea-Bissau 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 regular and intensive dialogue has been held in Guinea-Bissau. It focused on a series of measures intended to fulfil the undertakings given.

A number of significant measures have been taken by the authorities of Guinea-Bissau. In particular, we note that:

- a fair, free and transparent general election was held on 28 and 30 March 2004;
- progress has been made towards a return to an independent judiciary with the appointment of a public prosecutor and the election of the supreme court president.

These initiatives are definitely signs of the country's social and political stabilisation. There nevertheless remain issues of concern, especially with regard to the consolidation of public finances, and in particular public accounting, the collection of customs revenue and the payment of the majority of government employees.

The European Union attaches particular importance to the following measures to consolidate public finances:

- continuing implementation of the emergency economic programme adopted by the transitional government;
- the continuation of the current census of government employees;
- the adoption of corrective measures in the matter of public finances, including audits of the financial control system, public procurement and government revenue;
- the repayment of Community budgetary support following the 2003 audit into the use of resources;
- the submission of the conclusions of the government auditors' 2003 report on government revenue;
- the continuation of administrative and judicial proceedings against officials of the government preceding the transition period who committed irregularities or fraud.

In the wake of the consultations, it was decided by way of appropriate steps within the meaning of Article 96(2)(c) of the Cotonou Agreement, to normalise relations and continue cooperation while monitoring, over a period of eighteen months, progress made in the areas of public finances, the return to an independent judiciary, the restoration of civilian control over the armed forces and the pursuit of the electoral timetable with the presidential elections. Conditions should be provided in time to ensure that the Presidential elections are transparent and genuinely democratic. The European Commission will perform six-monthly evaluations during this period.

Close political dialogue with your government must continue in order to help consolidate democracy in your country.

Should the authorities of Guinea-Bissau fail to honour their undertakings, the European Union reserves the right to take appropriate measures. In particular, the European Commission could at the end of the eighteen-month period referred to above, reallocate uncommitted financial resources allocated to Guinea-Bissau under the 9th EDF.

I have the honour to be, Sir, yours faithfully,

For the Commission For the Council