



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.8.2004
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Proposal for a

COUNCIL DECISION

**concluding consultations with Togo under Article 96 of
the Cotonou Agreement**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The lack of progress towards democracy in Togo in recent years, as confirmed by the non-democratic nature of the last parliamentary and presidential elections and the scant respect for human rights and fundamental freedoms, led the European Union to conclude that the political situation was still in violation of Article 9 of the Cotonou Agreement. That is why it opened consultations with Togo under Article 96 of the Cotonou Agreement on 14 April this year.

The objective of these consultations was the full reinstatement of democracy and respect for human rights and fundamental freedoms, including freedom of the media and a strengthening of the rule of law. The consultations were also an opportunity to establish a new political roadmap to guide Togo in this process.

At the opening meeting of the consultations the European Union was pleased to note that Togo offered 22 undertakings: Briefly, these undertakings entailed:

- A return to democracy through a resumption of dialogue with the traditional opposition and civil society, including a revision of the electoral arrangements. Local and parliamentary elections will be organised within this new framework. Democratisation will be underpinned by a process of decentralisation.
- Strengthening of human rights and fundamental freedoms. The government will ensure that there is no torture or other inhuman or degrading treatment and uphold freedom of expression and information, the right of assembly, and freedom of movement. It is also planned to revise the articles of association and terms of reference of the National Commission for Human Rights (CNDH) and High Authority for Audiovisual and Communications (HAAC), to liberate political prisoners and to speed up the processing of people remanded in custody.
- Strengthening the rule of law, in particular the justice system; any revision of legislation necessary as a result will be part of this exercise.

The conclusions of these consultations also provide that the EU continue the dialogue with a view to ensuring that democracy and the rule of law in Togo are enhanced as fast as possible, this being a prerequisite for a complete normalisation of relations.

The EU has closely monitored the situation on the basis of two reports on the performance of these undertakings that Togo promised to deliver during the consultations. It has checked whether the undertakings have been carried out and measures adopted to ensure transparent and democratic elections as soon as possible. In so doing, the EU emphasised that the scale and substance of the Togolese authorities' implementation of their undertakings would be the decisive factor in determining the nature and scope of any measures deemed appropriate at the conclusion of the three-month period of dialogue and on-the-spot consultations.

The Togolese government presented two progress reports, one on 31 May and one on 1 July. After the first report and mid-way through the consultations a Commission follow-up mission went to Lomé and worked closely with representatives of the President's office. An ongoing dialogue took place between the Togolese government and EU representatives on the spot. At the end of the consultations the EU representatives evaluated implementation of the undertakings. The undertakings were also communicated to various representatives of the

world of politics and civil society, including political parties of all tendencies, representatives of the Catholic, Protestant and Muslim faiths, human rights NGOs, the CNDI and the HAAC.

They reported that the Togolese authorities had showed great willingness both to continue and step up talks and to facilitate their mission as specified in Undertaking 4.2.

According to this report, the Togolese authorities have taken encouraging measures in relation to some undertakings. A number of initiatives have been taken in connection with human rights, fundamental freedoms and the rule of law.

The authorities have organised information and awareness-raising meetings with prefects and police concerning various aspects of human rights and fundamental freedoms. They have distributed instructions and circulars setting out the existing directives and rules. This has produced some positive results, confirmed by the opposition.

- The authorities have instructed the courts to bring to trial all persons in remanded in custody in cases where preliminary investigations have been completed. This call for a speeding-up of procedures has led to the setting of 214 trial dates, including the cases of a number of prisoners considered political. The government ensured that lawyers had access to their clients during the preliminary inquiries.
- Access to the media, hitherto a preserve of the government and the party in power outside election campaigns, has been extended in recent weeks to opposition parties, though access is not yet truly equal.
- The government has embarked on reform of the press code and of the CNDH and the HAAC.
- A diagnostic study of the justice system has been carried out with the aid of the UN Development Programme (UNDP).
- The government is continuing efforts towards decentralisation and recently adopted a policy letter on the subject.

Nevertheless, serious points of concern remain concerning democratisation and the rule of law.

- Despite the preliminary meetings between government and opposition, an organised and transparent framework for national dialogue has not yet been established. So the dialogue has not yet really started.
- This also means that the review of the electoral arrangements to ensure a transparent and democratic process has not yet started. This could make it difficult to fulfil the undertakings concerning the holding of parliamentary and local elections, especially within the proposed deadlines.
- Outstanding matters include establishment of a legal framework for the financing of political parties, clarification of the situation of political prisoners and their possible liberation, revision of the articles of association and terms of reference of the CNDH and the HAAC, and revision of the press and communication code.

- Reform of the legal and justice system in accordance with the recommendations of the UNDP diagnostic study has still to be tackled.

At the conclusion of the consultations, taking into account the undertakings given thus far and the important measures still to be put in hand, the Commission proposes to adopt appropriate measures under Article 96(2)(c) of the Cotonou Agreement as set out in the attached Decision. The measures are proposed with a view to underpinning a process which is acknowledged to have delivered progress while motivating the government to consolidate this progress and, above all, to speed up performance of the undertakings concerning democratisation.

An enhanced political dialogue will be conducted with the Togolese government over a 24-month monitoring period in order to ensure that it continues on the path mapped out towards democracy and the rule of law and pursues and consolidates its efforts in the field of human rights and fundamental freedoms. There will be six-monthly evaluations over this period.

If implementation of the Togolese authorities' undertakings speeds up, or on the contrary breaks down, the EU reserves the right to adjust the appropriate measures by means of a new Council Decision amending this proposal.

In view of the above, and in accordance with Articles 9 and 96 of the Cotonou Agreement, the Commission proposes that the Council conclude the consultations with Togo and adopt the attached Decision.

Proposal for a

COUNCIL DECISION

**concluding consultations with Togo 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 in Cotonou on 23 June 2000 (“Agreement of Cotonou”), and in particular, Article 96 thereof,¹

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,² and in particular Article 3 thereof,

Having regard to the proposal from the Commission,³

Whereas:

- (1) Togo has violated the essential elements referred to in Article 9 of the ACP-EC Partnership Agreement.
- (2) On 14 April 2004, pursuant to Article 96 of the Cotonou Agreement, consultations started with the ACP countries and Togo during which the Togolese authorities gave specific undertakings designed to remedy problems identified by the European Union and to implement them during a period of intensive dialogue lasting three months.
- (3) At the conclusion of this period some substantive initiatives had been taken in respect of some of the undertakings referred to above; nevertheless the most important measures concerning essential elements of the Cotonou Agreement had not yet been taken,

HAS DECIDED AS FOLLOWS:

Article 1

Consultations with Togo under Article 96(2)(a) of the Cotonou Agreement are hereby concluded.

¹ OJ L 317, 15.12.2000, p. 3.

² OJ L 317, 15.12.2000, p. 376.

³ OJ C [...], [...], p. [...].

Article 2

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

Article 3

The decision of 14 December 1998 addressing a letter of the Council and the Commission to the Togolese government is hereby repealed.

Article 3

This decision shall enter into force on the day it is adopted.

It shall be valid for 24 months from the date of its adoption by Council.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft letter

Prime Minister,

The European Union attaches great importance to 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 Agreement and thus form the basis for relations between us.

The EU believes that the political situation in Togo is deadlocked and that the democratic deficit and scant consideration for human rights and fundamental freedoms constitute a violation of the essential elements set out in Article 9 of the Cotonou Agreement.

In view of this article and the current political deadlock in Togo it decided on 30 March 2004 to open consultations under Article 96 of the Agreement in order to thoroughly review the situation and find a remedy if possible.

These consultations took place in Brussels on 14 April 2004. Several fundamental issues were addressed, and you were able to present the Togolese authorities' point of view and their analysis of the situation. The European Union was pleased to note that Togo made certain undertakings and proposed positive steps to improve the climate for democracy and the rule of law in the country.

We note that the Togolese government made the following undertakings:

Undertaking 1.1

Ensure that democratic principles are fully upheld: immediate announcement of the resumption of an open, credible national dialogue with the traditional opposition and civil society in an organised and transparent framework.

Undertaking 1.2

Guarantee all political parties freedom of action without fear of harassment, intimidation or censorship

Undertaking 1.3

Revise the electoral arrangements on the basis of the Lomé Framework Agreement so as to ensure transparent and democratic elections that are acceptable to all parties within six months.

Undertaking 1.4

Ensure that all political parties have equitable access to public media and set up a fair system for the public funding of political parties.

Undertaking 1.5

Organise fresh parliamentary elections that are transparent, with international observers present at all stages of the process, as soon as possible, in keeping with the implementation of Undertaking 1.3.

Undertaking 1.6

Organise local elections that are transparent, with observers present at all stages of the process, within 12 months.

Undertaking 1.7

Create the conditions for necessary for democratically elected municipal assemblies to have a mandate and the resources needed to establish effective and democratically legitimate local government within 12 months.

Undertaking 2.1

Ensure that there are no instances of extrajudicial killings, torture or other forms of inhuman or degrading treatment on Togolese soil; this includes the proper training of those managing the police and the justice system.

Undertaking 2.2

Free all political prisoners who are clearly held for their political opposition, criticism of the government or other reasons not justifying detention. The list of prisoners concerned by this measure will be drawn up in collaboration with one or more recognised NGOs that are experienced in this field and accepted by all parties. This undertaking must be implemented within not more than six weeks.

Undertaking 2.3

Transfer all files on persons remanded in custody or released on bail to the public prosecutor's office within three months so that their cases can be examined in accordance with the law.

Undertaking 2.4

Give lawyers and humanitarian/human rights organisations, accompanied by a doctor of their choice, free access to detainees wherever they are held (prison, gendarmerie, police station, etc.) so that the absence of torture or other inhuman treatment can be verified before the end of the consultations.

Undertaking 2.5

Revise the articles of association and terms of reference of the National Commission for Human Rights (CNDH) with a view to making it truly independent vis-à-vis the administration within nine months.

Undertaking 2.6

Take legal or disciplinary action against the known perpetrators of extrajudicial killings, acts of torture and inhuman and degrading treatment. This undertaking also includes the amendment of relevant legislation and regulations where necessary.

Undertaking 2.7

Take adequate measures (to be specified later) to ensure that the justice system works impartially and independently of the executive. A diagnostic study providing the basis for an action plan will be presented before the end of the consultations.

Undertaking 3.1

Revise the press and communication code so as to align it on international standards within six months. Above all, we expect the abolition of prison terms for the offences of “defamation and besmirching honour” currently provided for in the press code.

Undertaking 3.2

Immediately ensure that the media, NGOs and civil society representatives do not suffer harassment, censure or intimidation.

Undertaking 3.3

Immediately ensure that all political and civil society representatives and ordinary citizens enjoy the right to freedom of expression and peaceful assembly in all public places throughout Togolese territory without fear of harassment, censure or intimidation.

Undertaking 3.4

Ensure the freedom of movement of all political and civil society representatives, both as citizens and in the exercise of their political or representative functions.

Undertaking 3.5

Ensure, before the end of the consultations, that all citizens have free access to information through the media, including the websites of opposition parties, non-governmental organisations and so on.

Undertaking 3.6

Revise the articles of association and terms of reference of the High Authority for Audiovisual and Communications (HAAC) within six months with a view to making it truly independent vis-à-vis the administration.

Undertaking 4.1

Present progress reports on the dialogue and performance of undertakings to the EU authorities on 1 June and 1 July 2004.

Undertaking 4.2

Willingness of the Togolese authorities to take part in the dialogue on the ground and facilitate any mission of officials from the Commission and the Presidency in the framework of this dialogue.

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

This ongoing in-depth dialogue on a list of measures to be taken in order to implement the agreed undertakings has taken place.

A number of significant measures have been taken by the Togolese authorities. In particular:

- The authorities have organised information and awareness-raising meetings with prefects and police concerning various aspects of human rights and fundamental freedoms. They have distributed instructions and circulars setting out the existing directives and rules. This has produced some positive results, confirmed by the opposition.
- The authorities have instructed the courts to bring to trial all persons remanded in custody in cases where preliminary investigations have been completed. This call for a speeding-up of procedures has led to the setting of 214 trial dates, including the cases of a number of prisoners considered political. The government ensured that lawyers had access to their clients during the preliminary inquiries.
- Access to the media, hitherto a preserve of the government and the party in power outside election campaigns, has been extended in recent weeks to opposition parties, though access is not yet truly equal.
- The government has embarked on reform of the press code and of the CNDH and the HAAC.
- An analysis of the justice system has been carried out with the aid of the UNDP.
- The government is continuing efforts towards decentralisation and recently adopted a policy letter on the subject.

These initiatives have undoubtedly improved respect for human rights and fundamental freedoms in your country. Nevertheless, a number of points continue to give rise to serious concern, especially as regards the restoration of democracy:

In this connection the EU is anxious for the following measures to be taken:

- The establishment of an organised and transparent framework for the start of a real national dialogue in accordance with Undertaking 1.1.
- In the context of this dialogue, a revision of the electoral arrangements with a view to ensuring that the process is transparent and democratic in accordance with Undertaking 1.3.

- The establishment of a legal framework for the financing of political parties in accordance with Undertaking 1.4.
- The organisation of parliamentary and local elections in accordance with Undertakings 1.5 and 1.6.
- Continuation of the process of decentralisation in accordance with Undertaking 1.7.
- A clarification of the situation of political prisoners followed by their possible liberation, as stipulated in Undertaking 2.2.
- Revision of the articles of association and terms of reference of the CNDH and the HAAC in accordance with Undertakings 2.5 and 3.6.
- Continued reform of the legal and justice system in accordance with the recommendations of the UNDP diagnostic study.
- Revision of the press and communication code in accordance with Undertaking 3.1.

The EU also attaches great importance to the continuation and consolidation of the initiatives already undertaken in the context of Undertakings 1.2, 1.4, 2.1, 2.3, 2.4, 2.6, 3.2, 3.3, 3.4 and 3.5.

In follow-up to the consultations, and in light of the undertakings given thus far and the important measures still to be put in hand, the Commission proposes to adopt the following appropriate measures under Article 96(2)(c) of the Cotonou Agreement.

- (1) Continued implementation of projects financed with the unexpended balances of the 6th and 7th European Development Funds that will meet the needs of the population and promote compliance with the essential elements of the Cotonou Agreement, namely, respect for human rights, democratic principles and the rule of law. The national programme of decentralised environmental management projects and the 1990-94 framework of mutual obligations will also be implemented.
- (2) Institutional aid for the implementation of measures to carry out the undertakings made during the consultations may be provided from 6th and 7th EDF funds. In this connection the Commission will adopt a financing decision on the programme to carry out a fourth general population and housing census.
- (3) The 9th EDF allocation will be notified once electoral arrangements that will ensure transparent and democratic elections accepted by all parties are adopted and a date for the holding of parliamentary elections is set. This will be the signal for the programming of resources.
- (4) Once the 9th EDF allocation is notified, aid for preparing the elections may be given as long as the conditions stipulated in the electoral arrangements are adhered to.
- (5) Togo's 9th EDF strategy paper will be signed and implemented once free and fair parliamentary elections have been held. The currently blocked 1996, 1998 and 1999 Stabex funds will be transferred.
- (6) Contributions to regional projects will be considered on a case-by-case basis;

- (7) Humanitarian operations, trade cooperation and trade-linked preferences will not be affected.

The EU Presidency and the European Commission will carry out regular joint reviews, the first of which will be done within the next six months.

The EU will continue monitoring the situation in Togo closely; an enhanced political dialogue will be conducted with your government over a 24-month monitoring period in order to ensure that it continues on the path mapped out towards democracy and the rule of law and pursues and consolidates its efforts in the field of human rights and fundamental freedoms.

If implementation of the Togolese authorities' undertakings speeds up, or on the contrary breaks down, the EU reserves the right to adjust the appropriate measures.

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

For the Commission For the Council