



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.8.2004
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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**concerning the opening of consultations with Côte d'Ivoire under Article 96 of the
Cotonou Agreement**

1. The peace agreement signed at Marcoussis on 24 January 2003 includes a number of commitments by Côte d'Ivoire with a view to restoring peace and stability and paving the way for credible, open and transparent elections in late 2005. These commitments concern a number of issues relating to the essential elements referred to in Articles 9 and 96 of the Cotonou Agreement: human rights, democratic principles and the rule of law.

At the Paris Summit of 26 January 2003, where the international community gave its backing to the Marcoussis Agreement, which the UN Security Council then formally endorsed by Resolution No 1464 of 4 February 2003, Mr Prodi said that the European Commission was willing to mobilise the resources necessary for Côte d'Ivoire to return to stability and economic development, provided the commitments given at Marcoussis and solemnly reiterated at the Paris Summit were effectively honoured and peace, stability and security lastingly restored with full regard for human rights. In his speech, the President of the European Union made similar remarks on the need for the Ivorian parties present to honour the commitments made at Marcoussis.

2. In the matter of human rights, the EU has, from the very outset of the serious political and military crisis that has beset the country since 19 September 2002, repeatedly expressed concern at violations committed by both sides, chiefly prior to the signing of the Marcoussis agreement on 24 January 2003.

In a number of statements published since the conflict began the EU has expressed concern at the human rights situation in Côte d'Ivoire. In a statement of 21 October 2002 the EU, though welcoming the ceasefire, expressed concern about human rights. In a statement of 15 November 2002 calling for the signing of a peace agreement, the EU also condemned the human rights violations observed, as exemplified by the murder of Dr Benoît Dacoury-Tabley. Following the discovery of mass graves, the EU, on 17 December 2002, again condemned human rights violations in the country.

The situation later improved until the murder of the journalist Jean Hélène, which the EU condemned in a statement of 27 October 2003 calling on the authorities to rein in the security forces. After a few months of calm the EU, in a statement of 25 March 2004, deplored the resurgence of violence in Côte d'Ivoire and, in a further statement on 8 April 2004, deplored the events of 25 March and expressed concern about other serious violations of human rights in the days that followed and about the safety of Ivorian and foreign nationals.

The conclusions of the report of the UN commission of inquiry on the events connected with the march planned for 25 March 2004 in Abidjan make interesting reading: *“What happened on 25 and 26 March was the indiscriminate killing of innocent civilians and the committing of massive human rights violations. The march became a pretext for what turned out to be a carefully planned and executed operation by the security forces, i.e. the police, the gendarmerie, the army, as well as special units and the so-called parallel forces, under the direction and responsibility of the highest authorities of the State.”* According to the report, *“at least 120 people were killed, 274 wounded and 20 disappeared.”*

There have since been other grounds for concern about human rights. The disappearance of French-Canadian journalist Guy-André Kieffer on 16 April 2004 was followed, on 7 June, by a witch-hunt in which “young patriot” extremists assaulted dozens of Westerners on the streets of Abidjan. On 25 June 2004 a French soldier taking part in Operation Unicorn was murdered by a rogue element of the Ivorian army. And, on 28 June 2004, the body of Habib Dodo, a law student and leader of the youth movement of Côte d'Ivoire's Revolutionary

Communist Party (PCRCI), who had been abducted on 23 June by extremist students claiming to belong to the student federation, the FESCI, was found with a rope round his neck in a sack by the side of a road in Abidjan.

Last but not least, the act setting up the National Commission on Human Rights adopted during the extraordinary session of parliament of April 2004 does not reflect what was agreed at Marcoussis. The composition of the Commission does not include the three parties of the Forces Nouvelles which signed the Marcoussis Agreement, Annex VI, paragraph 1, of which specified that the Commission would be made up of delegates of all parties.

3. In the matter of democratic principles, another essential element of the Cotonou Agreement, there can be no denying the serious delays and shortcomings in honouring the commitments given at Marcoussis.

In particular, there are serious grounds for doubting whether the 2005 elections can be organised in satisfactory conditions. Owing to the delay in applying the Marcoussis Agreement, it will no longer be possible to apply the provisions of Annexes I and II to the Agreement concerning the identification of voters and electoral rolls. The resolution of the thorny issue of eligibility for the presidency referred to in Annex III to the Agreement is also way behind schedule.

On the first score – the identification of voters – the operation by the contractor, SITEL, has been seriously delayed: it did not restart until June 2004, and then only in areas under government control. As for the National Identification Supervisory Commission (CNSI), which was set up under the Marcoussis Agreement in January 2004 to supervise the National Identification Office, itself set up in 2001 as the only body empowered to issue identity papers, it has yet to receive any funding whatsoever. It was not until early July 2004 that a decision was taken to allocate funds to the CNSI. Since it is now technically impossible to base the new electoral rolls on the identification exercise, the two exercises will now have to be conducted separately. It is, however, difficult to see, at this stage, how the electoral rolls can be drawn up – an activity scheduled by the Electoral Commission for the two months from mid-January to mid-March 2005 - without a successful identification exercise.

What is more, the bill amending the Nationality Act has yet to be adopted: it was only tabled in the National Assembly in June 2004.

Lastly, the Identification Act of 3 May 2004, adopted during April's extraordinary session of the National Assembly, poses a serious problem in that Article 3(5) stipulates that the national identity card is to specify whether nationality was acquired by birth or naturalisation. Of questionable utility, this reference offers scope for considerable abuse or harassment during checks. The potential danger is enormous, as attested by recent tragic events in other countries.

On the second score, the amendment of the electoral system is also far behind schedule. The bill altering the composition of the Independent Electoral Commission (CEI), which was set up in 2001 and performs a crucial role, since it is responsible for organising elections and referendums, was first tabled in the National Assembly at the extraordinary session opened in 28 April 2004. During the debates, the anti-Marcoussis deputies contested the composition of the CEI despite the fact that the government had, in line with the Marcoussis Agreement, drafted the bill to reflect the full spectrum of Ivorian political opinion. On 24 June the minister for local government chose to withdraw his text rather than see it adopted in a

bastardised form, as had happened when the act setting up the National Human Rights Commission was adopted in April. The FPI attempted to attach strings to the admission of the Forces Nouvelles to the CEI after disarmament and wanted that membership to be of limited duration.

The composition of the Constitutional Council, which has a major role to play in electoral matters, since it rules in electoral disputes and announces the results of elections, could also pose problems. The Office of the UN Secretary-General, in its report of 6 January to the Security Council, itself raised the issue of the appointment of the Council's members in August 2003. The Council has eight members: the former president of the republic, three members appointed by the president of the National Assembly and three members appointed by the president of the republic, who also appoints the Council's president. The August 2003 appointments were made without consultation with the parties, contrary to the spirit of the Marcoussis Agreements, which, admittedly, do not mention the Constitutional Council. The circumstances surrounding these appointments give cause to fear that the Council's decisions might be biased, like those taken in 2000 by the Supreme Court, which has since been replaced by a number of institutions, the Constitutional Council being one of them.

Similarly, there has yet to be a detailed assessment of the electoral budget by the UN, which has still to carry out the planned mission owing to ongoing political resistance and security problems.

As for the third issue – the extremely sensitive matter of eligibility for the presidency – it is far from certain that the commitments made at Marcoussis will be honoured. Regrettably, the bill amending Article 35 of the Constitution, which, under Article 126 of the Constitution, has to be approved by a referendum, has yet to be submitted to the National Assembly, which, under Article 125 of the Constitution, has to approve it by a two-thirds majority before it can go to a referendum.

4. As for the rule of law, another of the Cotonou Agreement's essential elements, the Ivorian government appears to lack the legal remedies necessary to overcome the difficulties besetting the cocoa sector audit which the government of national unity asked the EU to finance in 2003.

The first stage of the audit was completed last autumn and a provisional report published on 9 October 2003. This report did not cover all the issues specified in the terms of reference because the information gathered was incomplete owing to a lack of cooperation on the part of certain structures and their refusal to comply with the requirements of the audit: the report underlines that the two most important institutions from the revenue-collection standpoint refused to cooperate in the audit.

The provisional report highlighted a number of problems, including:

- the institutional confusion caused by the disparate legal forms of the four structures that replaced the CAISTAB in 1999. Four bodies, the Coffee and Cocoa Regulatory Agency (ARCC), the Coffee and Cocoa Exchange (BCC), the Fund for the Development and Promotion of Coffee and Cocoa Cooperatives (FDPCC) and the Cocoa Regulatory Fund (FRC), along with several ministries and an interministry committee, are now involved in administering or regulating the sector;
- the inability to gain an overview of financial flows owing to the shortage and/or complete lack of data on the royalties collected by the FDPCC and on behalf of the Prudential

Reserve (which, according to the provisional report, ought to have a balance of more than CFAF 100 billion, though the use made of these funds has yet to be determined);

- the relationship between the resources collected and their use: the difficulty of obtaining information left the auditors unable to answer this crucial question;
- the high level of taxation of the sector: during discussions with the donors in 2001, and in particular with the World Bank and the International Monetary Fund, it had been agreed that the total tax burden should not exceed 30%, 20% of it in taxes and 10% in royalties. The provisional report found the overall level of taxation to be about 37%.

In the wake of the provisional report, the donors sent the prime minister an aide-mémoire in November 2003; in January 2004 they met him to reiterate the need to carry out the second stage of the audit and take the interim measures advocated by the provisional report.

The government argued that the “private” nature of these four bodies prevented the state from obliging them to audit their financial flows. In their aide-mémoire, the donors pointed out that:

- the levies had all been imposed by ministerial decree and were not a voluntary contribution on the part of farmers;
- every executive or supervisory board included a government commissioner responsible for monitoring compliance with the law, advising the parties and mediating in disputes.

Though Commission officials at both the Delegation in Abidjan and Headquarters have repeatedly stressed to the Ivorian authorities the need to complete the audit, the second stage has yet to get under way owing to the dogged refusal of those bodies still to be audited. In Brussels, the Commission has raised this matter at a high level on a number of occasions and in particular at meetings with the minister of agriculture on 13 February 2004, the prime minister on 25 February 2004 and the minister for national reconciliation on 29 June 2004.

There seems to be no legal remedy against the repeated refusal by those bodies still to be audited. The lack of an effective legal remedy constitutes a breach of the rule of law.

5. In view of the above, the Commission believes that consultations should be initiated with Côte d’Ivoire under Articles 9 and 96 of the Cotonou Agreement.

The purpose of such consultations is:

- to reiterate the EU’s concern about human rights violations and to find out how Côte d’Ivoire plans to end the climate of lawlessness that breeds such violations and lay long-term legislative, regulatory and judicial foundations for improvements in this area;
- to underscore the great importance attached by the EU to the organisation of elections in 2005 in satisfactory conditions, avoiding a recurrence of the problems which occurred in 2000 and gave rise to the previous Article 96 consultations in February 2001, and find out how Côte d’Ivoire plans to achieve this on time;
- to reiterate the need, which the EU and other international donors consider overriding, for the Ivorian government to take the requisite steps to assert its authority and permit the smooth execution of the second stage of the cocoa sector audit initiated at its request in 2003;

– to determine whether there is a need for appropriate steps under Article 96 of the Cotonou Agreement.

6. The Commission therefore proposes that the Council invite Côte d'Ivoire to consultations pursuant to Articles 9 and 96 of the Cotonou Agreement, in accordance with the attached draft letter.

ANNEX

Brussels,

HE Mr Laurent Gbagbo
President of the Republic of Côte d'Ivoire
Présidence
Abidjan
Côte d'Ivoire

DRAFT

Your Excellency,

The European Union has repeatedly expressed its concern at the situation in Côte d'Ivoire, notably through statements by the Presidency and whenever there have been high-level meetings with your country's authorities in the course of the standing political dialogue.

The main issues of concern to the EU have been the human rights situation, the impact of delays in applying the Marcoussis Agreement on the organisation of credible, open and transparent elections in 2005 in satisfactory conditions, and the complete lack of headway in the past six months towards completing the EU-financed audit of the coffee and cocoa sector, which was begun in 2003 at the request of the Ivorian government of national unity.

Pursuant to Article 96 of the Cotonou Agreement, we have the honour, on behalf of the Community and the Member States of the European Union, to invite your country to consultations, as provided for in the Agreement, with a view to examining the situation in depth and, if necessary, remedying it.

We suggest that these consultations take place soon, on a date to be settled by mutual agreement, at the premises of the Council of the European Union.

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

For the Council

For the Commission

Copies: Chairman of the ACP Committee of Ambassadors
Secretary-General of the ACP Group