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EUROPEAN COMMISSION

Brussels, 1.2.2011  
COM(2011) 30 final

2011/0013 (NLE)

Proposal for a

**COUNCIL DECISION**

**on adapting and extending the period of application of the measures  
in Decision 2002/148/EC concluding consultations with Zimbabwe  
under Article 96 of the ACP-EC Partnership Agreement**

## EXPLANATORY MEMORANDUM

1. On 18 February 2002, the Council of the European Union decided to take "appropriate measures" against Zimbabwe<sup>1</sup> following the consultations under Article 96 of the ACP-EC Partnership Agreement<sup>2</sup>. These measures included the suspension of budgetary support, support for projects, and the signature of the 9<sup>th</sup> EDF National Indicative Programme, but explicitly did not affect contributions to humanitarian operations and projects in direct support of the population, in particular in the social sectors, democratisation, human rights and the rule of law. They also included suspension of Article 12 of Annex 2 to the ACP-EC Partnership Agreement, concerning current payments and capital movements, in so far as required for application of further restrictive measures, in particular for freezing funds.
2. The reasons stated for introducing these measures were the serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly. The attempts by the Government of Zimbabwe to prevent free and fair elections, notably by refusing access for international election observers and for the media were another reason.
3. Under Article 2(3) of the Decision of 18 February 2002, the measures were to apply for a period of 12 months, but would be revoked once the prevailing conditions ensured respect for human rights, democratic principles and the rule of law.
4. On eight occasions, on 18 February 2003<sup>3</sup>, 19 February 2004<sup>4</sup>, 17 February 2005<sup>5</sup>, 14 February 2006<sup>6</sup>, 19 February 2007<sup>7</sup>, 18 February 2008<sup>8</sup>, 20 February 2009<sup>9</sup> and 15 February 2010<sup>10</sup> the Council concluded that the essential elements referred to in Article 9 of the ACP-EC Partnership Agreement continued to be violated by the Government of Zimbabwe and that the prevailing conditions did not ensure respect for human rights, democratic principles and the rule of law, and decided to extend the measures against Zimbabwe, each time for a further period of 12 months.
5. The Global Political Agreement (GPA), a power sharing agreement between the three main political parties (ZANU PF, MDC-T, MDC-M), was concluded in September 2008, following elections in March 2008. The GPA allowed for the establishment of the Government of National Unity (GNU), comprised of the leaders of each of the three parties, in February 2009.

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<sup>1</sup> Cf. Council Decision 2002/148/EC (OJ L 50, 21.02.2002, p. 64. Furthermore (see GAC conclusions of 18 February 2002) the Council adopted targeted CFSP measures (Council Common Position 2002/145/CFSP and Council Regulation (EC) No310/2002 concerning certain restrictive measures in respect of Zimbabwe, OJ L 50, 21.02.2002, pp. 1-12).

<sup>2</sup> Article 96 consultations were opened with a view to agreeing on measures to be taken by the Government of Zimbabwe to remedy the situation, in particular on five issues (end to all official tolerance of political violence; early invitation to international partners to support and observe forthcoming elections and full access to that end; protection of the freedom of mass media; independence of the judiciary and respect for its decision; and end to illegal occupation of properties).

<sup>3</sup> OJ L 46, 20.02.2003, p. 25.

<sup>4</sup> OJ L 50, 20.02.2004, p. 60.

<sup>5</sup> OJ L 48, 19.02.2005, p. 28.

<sup>6</sup> OJ L 48, 18.02.2006, p. 26.

<sup>7</sup> OJ L 53, 22.02.2007, p. 23.

<sup>8</sup> OJ L 51, 26.02.2008, p. 19.

<sup>9</sup> OJ L 49, 20.02.2009, p. 15.

<sup>10</sup> OJ L 44, 16.02.2010, p. 20

6. The EU supports the GNU as the only political framework for restoring democracy. The GPA sets out a series of reforms which address EU concerns on human rights, rule of law and democratic principles such as the elaboration of a new constitution, a land audit, a national healing process, independence of the media etc. Its implementation is essential for the conduct of credible elections.
7. Upon request of the Government of Zimbabwe, a Ministerial Troika took place on 18-19 June 2009. The Zimbabwean Delegation to Brussels was led by Prime Minister Morgan Tsvangirai. On this occasion, Article 8 political dialogue was launched and was subsequently followed-up by an EU Troika visit to Zimbabwe on 11-12 September 2009.
8. The parties have agreed that the objective of the dialogue will be to establish joint road maps with a detailed action plan of how the GNU intends to implement the GPA and how the EU shall improve relations with Zimbabwe, which foresees the eventual lifting of Article 96. Normalization of relations would also allow for a revision of the Common Foreign and Security Policy Common Position<sup>11</sup>.
9. In the interim, the European Commission prepared an ad-hoc short-term response to support the stabilization of the GNU and its reform programme.
10. Since February 2009, the GNU has taken a number of important steps for the economic and social stabilization of the country. However, insufficient progress has been acknowledged in the implementation of political reforms, resulting in a constitutional crisis.
11. The Southern African Development Community (SADC), under the leadership of President Zuma, appointed a new South African Facilitation Team which successfully mediated inter-party discussions and allowed for an effective assessment of GPA implementation. However, the prospects of impending elections have since revived inter-party tensions.
12. South Africa and SADC are currently engaging the GNU in an effort to establish an environment conducive to credible elections. This process of engagement includes a consultative process between South Africa, SADC and the GNU to establish a road map which would lead to democratic elections. South Africa, SADC and the three political leaders in Zimbabwe consider EU measures to be an impediment to such efforts.
13. Taking into account the mixed substantial progress in the implementation of the GPA, the Commission is proposing to the Council to extend the existing Article 96 appropriate measures until 20 February 2012.
14. However, the EU recognizes the unique opportunity for reengagement provided by the prospect of an agreement between the parties to the GNU on a roadmap for elections, to be endorsed by SADC. The Commission proposes to the Council to reconsider the restrictions on development cooperation following the endorsement of the road map for elections, for example at the next SADC Summit. This would

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<sup>11</sup> 2009/68/CFSP of 26.01.09.

effectively allow for the drafting of a Country Strategy Paper (CSP). It is anticipated that the CSP would not be ready for signature before elections are held.

15. Should the agreed road map for elections fail to be properly implemented, the EU will reassess application of the restrictions on development cooperation under Article 96.
16. The Commission proposes to inform the Government of Zimbabwe about the shift in EU policy by way of a letter to be addressed to President Mugabe and copied to the two other Principals of the GNU, Prime Minister Tsvangirai and Deputy Prime Minister Mutambara.

### **Conclusion**

In light of the above, the Council is requested to adopt the attached draft proposal for a Council Decision extending the period of application of the appropriate measures to Zimbabwe.

Proposal for a

## COUNCIL DECISION

### **on adapting and extending the period of application of the measures in Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 thereof,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000<sup>12</sup> and revised in Ouagadougou, Burkina Faso, on 23 June 2010<sup>13</sup>, hereinafter referred to as "the ACP-EC Partnership Agreement", and in particular Article 96 thereof,

Having regard to the Internal Agreement between the representatives of the governments of the Member States, meeting within the Council, on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement<sup>14</sup>, and in particular Article 3 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Decision 2002/148/EC<sup>15</sup>, the consultations with the Republic of Zimbabwe under Article 96(2)(c) of the ACP-EC Partnership Agreement were concluded and appropriate measures, as specified in the Annex to that Decision, were taken.
- (2) By Decision 2010/97/CFSP<sup>16</sup> the application of the measures referred to in Article 2 of Decision 2002/148/EC was extended for a further period of 12 months until 20 February 2011.
- (3) The creation of the Government of National Unity (GNU) was recognized as an opportunity to re-establish a constructive relationship between the European Union and Zimbabwe and to support the implementation of Zimbabwe's reform programme.
- (4) However, recent political developments coupled with absence of an agreed road map for elections continue to undermine such efforts as does the lack of progress by the GNU to

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<sup>12</sup> OJ L 317, 15.12.2000, p. 3.

<sup>13</sup> OJ L 287, 4.2.2010, p. 3.

<sup>14</sup> OJ L 317, 15.12.2000, p. 376.

<sup>15</sup> OJ L 50, 21.2.2002, p. 64.

<sup>16</sup> OJ L 44, 16.2.2010, p.20.

implement certain essential elements of the ACP-EC Partnership Agreement, to which the GNU had committed in the Global Political Agreement (GPA).

- (5) The EU recognises South African efforts, as facilitator of the GPA, to arrive at an agreed road map leading to credible elections.
- (6) The EU will therefore reconsider the restrictions on development cooperation following endorsement by SADC of a road map for elections.

HAS ADOPTED THIS DECISION:

*Article 1*

The measures referred to in the annexed letter are hereby reconducted as appropriate measures within the meaning of Article 96(2)(c) of the ACP-EC Partnership Agreement.

These measures shall apply until 20 February 2012. The measures shall be kept under constant review and will be reconsidered as soon as a road map for elections has been endorsed by SADC.

*Article 2*

The letter in the Annex to this Decision shall be addressed to President Mugabe of Zimbabwe and copied to Prime Minister Tsvangirai and Deputy Prime Minister Mutambara.

*Article 3*

This Decision shall enter into force on the day of its adoption.

*Article 4*

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

Done at Brussels,

*For the Council  
The President*

## ANNEX

### LETTER TO THE PRESIDENT OF ZIMBABWE

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

By letter of 19 February 2002, the European Union informed you of its decision to conclude the consultations held under Article 96 of the ACP-EC Partnership Agreement and to take appropriate measures within the meaning of Article 96(2)(c) of that Agreement.

By letter of 15 February 2010, the European Union informed you of its decision not to revoke the appropriate measures and to extend the period of application until 20 February 2011.

Since the establishment of the Government of National Unity (GNU) in 2009, the progress achieved based on the Global Political Agreement (GPA) has been welcomed by the European Union. The European Union reiterates the great importance it attaches to the political dialogue, provided for in Article 8 of the ACP-EC Partnership Agreement, and officially launched at the request of the Government of Zimbabwe at the EU-Zimbabwe Ministerial Troika on 18-19 June 2009 in Brussels. At the most recent Ministerial Meeting of 2 July 2010, an inclusive Zimbabwean Delegation headed by Minister Mangoma, handed over an updated version of the GPA Commitment Plan. The European Union took note of the progress made so far in the implementation of the GPA and informed the Government of Zimbabwe by letter of 29 September 2010 of the 10<sup>th</sup> EDF indicative allocation (€130 million to become available upon lifting of Article 96 and signing of a Country Strategy Paper).

The European Union supports the ongoing efforts of the GNU to implement the GPA, and welcomes the achievements made in stabilising the economy and restoring basic social services. The intensified regional diplomacy led by South Africa in support of reform in Zimbabwe is equally positively acknowledged. However, the European Union regrets the lack of progress on key political agreements of the GPA, in particular those related to creating a conducive environment for democratic elections.

In view of possible elections in 2011, the European Union considers an agreement between all parties to the GNU and the Southern African Development Community (SADC) on a road map for elections to be of critical importance. This road map, which would establish a set of mutually agreed milestones and define the role of SADC in election monitoring and observation, would ensure elections reflect the will of voters. At the moment of renewal of Article 96 appropriate measures, agreement on the road map for elections had yet to be reached.

The European Union has therefore decided to extend until 20 February 2012 the period of application of the appropriate measures set out in Council Decision 2002/148/EC and updated in Council Decision 2010/97/CFSP. However, the European Union recognizes the unique opportunity for reengagement provided by the prospect of an agreement between the parties to the GNU on a road map for elections, which should be endorsed by SADC. Accordingly, the European Union is willing to reconsider Article 96 measures as soon as a road map for elections has been agreed by the GNU and endorsed by SADC. This signifies a shift in policy for the European Union, which we hope will give new impetus to enhancing relations between the parties.



Yours faithfully,

*For the European Union*