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COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

on the opening of consultations with Niger under Article 96 of the Cotonou Agreement

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Since the turmoil of the 1990s, Niger has experienced a period of relative stability over the last ten years, crucial for a country that remains one of the poorest in the world. During the last decade, which has coincided with President Tandja's two terms in office, development efforts have helped to keep the country's economic situation stable despite rapid population growth and major climate constraints.

In the run-up to the forthcoming elections in November and December, a period of political instability has been triggered by the actions of President Tandja, who is attempting to remain head of state beyond the end of his second term ending on 22 December, contrary to the terms of the 1999 Constitution.

In his message to the nation on 29 May, President Tandja confirmed his intention of holding a referendum on a new Constitution that would allow him to remain in office following the end of his second five-year term. The Constitutional Court had earlier delivered an opinion, at the National Assembly's request, ruling against the possibility of re-election or the extension of President Tandja's mandate and opposing the amendment of the Constitution by referendum. In the light of this ruling, which he considered non-binding, the President had used his presidential prerogatives to sign a decree on 26 May, dissolving the National Assembly (parliamentary elections were scheduled for November/December).

Citing national stability and the need to finish off the development work he had started and to respect the sovereign will of the people, on 9 June President Tandja announced the date of a referendum (4 August) to be held on a new Constitution that would provide for: a move to a presidential system that involved the abolition of the current limit on the number of terms a president can serve (two); the creation of a Senate; changes to the Constitutional Court to increase its membership to nine; confirmation of the principle of amnesty. In addition, a transitional period of three years would be introduced to allow the head of state to remain in power beyond 22 December without going to the polls.

Having once again been approached by a group of opposition parties and thus intervening for the second time against President Tandja's plans, on 12 June the Constitutional Court published an order annulling the decree on the referendum ruling that it had been "adopted in violation of Articles 49 and 135 of the Constitution". Meanwhile the Council of the Republic, urgently convened by the President for the first time since it was established under the Constitution of 1999, declared that it was unable to rule in the absence of the National Assembly. On the day after the Court's ruling, the National Independent Election Commission called for parliamentary elections on 20 August and opposed the holding of a referendum.

On 29 June the President responded to the stance taken by the Court by suspending it three days after granting himself extraordinary powers under Article 53 of the Constitution. The Court was later dissolved and a new Court appointed that did not include any members appointed by the National Assembly.

On 8 July the President amended Act 2006-24 on the organisation, powers and function of the High Council for Communication (CSC). The amendment gave the CSC President similar

special powers to those the President had given himself and authorised him to take action, at his discretion, against any media body that broadcast or published information that might endanger state security or public order.

In a message to the nation on 12 July, the President launched the referendum campaign, calling for a massive "Yes" vote.

The referendum took place on 4 August without major incident, although a number of irregularities in the voting procedures were reported. With no independent election observers present, the level of the turnout is disputed: according to the international media, diplomatic missions in the country and the opposition, voter turnout was low; according to an Electoral Commission statement on 7 August, the turnout was 68.3% with 92.5% of voters saying "Yes" to the changes to the Constitution that the President wanted. The opposition had called for a boycott of the referendum.

On 2 July the Presidency of the European Union published a statement expressing the EU's grave concern at political developments in Niger, in particular the decision taken by President Tandja to invoke Article 53 of the Constitution so as to grant himself special powers which were then used to dissolve the Constitutional Court and call a referendum that was explicitly forbidden by the Constitution.

On 9 July the Commission wrote to President Tandja reiterating these concerns and calling for compliance with the decisions of the Constitutional Court. The Commissioner indicated that the compatibility of the measures taken by President Tandja with the essential elements of the Cotonou Agreement would have to be examined and that an enhanced political dialogue should begin immediately with Niger's Government, adding that if this dialogue failed to reach an acceptable compromise, the Commission would be obliged to propose the formal opening of consultations under Article 96 of the Agreement.

On 24 July, the EU's representatives in Niamey held talks with the Nigerien authorities as part of the enhanced political dialogue in accordance with Article 8 and Annex VII of the Cotonou Agreement. The dialogue failed to identify a willingness on the part of Niger's Government to return to the legitimate constitutional framework.

A joint UN-AU-ECOWAS mission also visited Niamey on 20 and 21 July in an attempt to defuse the crisis. President Tandja has nevertheless not moved from his position.

In a further statement on 31 July the EU Council Presidency reiterated the Union's concerns at the situation in Niger. The Presidency said that the referendum of 4 August violated the Constitution and flouted the ruling of the Constitutional Court. The dissolution of the Constitutional Court and the exercise of government powers without parliamentary control were considered grave violations of core democratic values and the principles of the rule of law. The European Union regretted that the dialogue with the Government of Niger had revealed no inclination on its part to return to democratic and constitutional proceedings. The statement underlined the possible consequences of the violation of the Cotonou Agreement for cooperation between the EU and Niger and called on the country's authorities to return to democratic and constitutional rule without further delay.

Article 9(2) of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000 and revised in Luxembourg on 25 June 2005 lays down the essential elements on which the partnership is based. It states that respect for democratic principles and the rule of law, which

underpin the ACP-EU Partnership, must underpin the domestic and international policies of the Parties and constitute the essential elements of the Agreement.

In the light of the Agreement and the political situation in Niger, the Commission feels that, without prejudice to the remainder of President Tandja's term until 22 December, a violation of these essential elements has taken place and considers it necessary to open consultations with the authorities in power in Niger in order to examine possible solutions to the crisis which would re-establish constitutional order. These consultations should encourage a swift return to a consensual and inclusive political dialogue that would establish a constitutional framework embracing the political forces of the country. These consultations will be conducted in accordance with Articles 9 and 96 of the revised Cotonou Agreement and will take account of the results of mediation and consultation conducted by the European Union and other international institutions.

Such dialogue will give the Nigerien Government, the other political forces and civil society representatives an opportunity to state their intentions and their proposals for ending the crisis and allow the EU to judge whether and how it could, on the basis of this dialogue, support initiatives directed at compliance with the principles set out in Article 9(2) of the revised Cotonou Agreement.

The Commission therefore proposes that the Council invite the Republic of Niger for consultations under Articles 9 and 96 of the Cotonou Agreement, in accordance with the draft letter attached.

The Commission proposes that, during the consultation period, ongoing cooperation activities and those planned under the recently signed 10th EDF national indicative programme be confined to payments relating to contracts already being implemented, humanitarian measures or those that directly benefit the population and preparatory measures for the implementation of future projects. It further proposes that the other elements of the development cooperation framework with Niger be suspended until an acceptable solution to the crisis is found.

ANNEX

Brussels,

The President of the Republic of Niger,

DRAFT

Sir,

In a letter of the Commission dated 9 July and in its statements made on 2 and 31 July, the Presidency of the European Union reiterated its deep concern at the political situation in Niger and called for a swift return to constitutional order. The European Union considered that the referendum of 4 August and the process that led to it were violations of the Constitution. These concerns were confirmed in the Commission's statement of 10 August. This situation is a serious violation of the essential elements set out in Article 9(2) of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000 and revised in Luxembourg on 25 June 2005, to which Niger is a party.

The European Union has expressed its regret that the dialogue with the Government of Niger has revealed no inclination to return to constitutional proceedings. It has also underlined the possible consequences of the violation of the Cotonou Agreement for cooperation between the EU and Niger and called on the Nigerien authorities to take the necessary steps without delay to return to constitutional legality by seeking consensus and inclusive dialogue between political parties and the other elements of civil society in Niger.

In the light of these circumstances, the parliamentary elections scheduled for 20 October could be crucial to establishing the climate of confidence and participation that is required to bring an end to the crisis. The European Union urges the authorities of Niger to do their utmost to ensure that the election proceeds under fair, open, peaceful and inclusive conditions.

In application of Article 96 of the Cotonou Agreement and in view of the essential elements referred to in Article 9(2) of the Agreement, we have the honour to invite your country for consultations in order, as provided for in the Agreement, to study the situation in depth and, where appropriate, take steps to remedy it.

We propose that these consultations take place in Brussels in the near future, at a date to be agreed jointly.

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

For the Council

For the Commission

Cc: President of the ACP-EU Council of Ministers
Chairman of the ACP Committee of Ambassadors
General Secretariat of the ACP Group