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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.1.2009
COM(2009) 41 final

Proposal for a

COUNCIL DECISION

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 Zimbabwe¹ following the consultations under Article 96 of the ACP-EC Partnership Agreement². These measures included suspending budgetary support and support for projects, and suspending signature of the 9th 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. A more immediate reason was the attempts by the Zimbabwean government to prevent free and fair elections, notably by refusing access for international election observers and for the media.
3. Under Article 2(3) of the Decision of 18 February 2002, the measures were to apply for a period of twelve months, but would be revoked once the prevailing conditions ensured respect for human rights, democratic principles and the rule of law.
4. On six occasions, on 18 February 2003³ 19 February 2004⁴ 17 February 2005⁵, 14 February 2006⁶, 19 February 2007⁷ and 18 February 2008⁸ 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 12 months.
5. Although a power sharing agreement was concluded between the three parties (ZANU PF, MDC - T, MDC - M) in September 2008 following the election in March 2008, since February 2008 there has been no substantial progress on the areas of concern to the EU identified by the Article 96 consultations, and no genuine commitments and positive measures have been undertaken by the Government of Zimbabwe to remedy the situation. Furthermore, there is evidence of an increase in political violence in the country, particularly against MDC supporters and against defenders of human rights.

¹ 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 sanctions (Council Common Position 2002/145/CFSP and Council Regulation (EC) No310/2002 concerning certain restrictive measures in respect of Zimbabwe, OJ L 50, 21.2.2002, pp.1-12).

² 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 decisions; and end to illegal occupation of properties).

³ OJ L 46, 20.2.2003, p. 25.

⁴ OJ L 50, 20.2.2004, p. 60.

⁵ OJ L 48, 19.2.2005, p. 28.

⁶ OJ L 48, 18.2.2006, p. 26.

⁷ OJ L 53, 22.2.2007, p. 23.

⁸ OJ L 51, 26.2.2008, p. 19.

6. The review of the current Decision, which runs until 20 February 2009, coincides with an on-going initiative led by the SADC to implement the power sharing agreement signed in September 2008, to which the EU has given its full support but which is stalling at present.
7. Taking into account the considerations set out above, the Commission can only, at this stage, propose an extension of the current policy, as any lifting or even easing of the current measures is not justified.
8. Therefore, the Commission is proposing to the Council to extend the current decision for a further 12 months ending on 20 February 2010. Given that the proposed decision is only an extension of the existing measures without any substantive change, it is not necessary to reopen consultations with the Republic of Zimbabwe under Article 96 of the ACP-EU Partnership Agreement.
9. Another measure proposed is to inform the Government of Zimbabwe, in the annexed letter to President Mugabe, that the EU remains open to discuss with the Zimbabwean authorities the conditions for full re-engagement with a view to the recovery of the country whenever political conditions allow it.
10. The Decision should be kept under constant review, and the measures should be revoked once the prevailing conditions ensure respect for human rights, democratic principles and the rule of law.

Conclusion

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

Proposal for a

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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 establishing the European Community, and in particular Article 300(2) thereof,

Having regard to the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000⁹ and revised in Luxembourg on 25 June 2005,¹⁰

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,¹¹ and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By Council Decision 2002/148/EC¹², the consultations with the Republic of Zimbabwe under Article 96(2) (c) of the ACP-EC Partnership Agreement¹³ were concluded and appropriate measures, as specified in the Annex to that Decision, were taken.
- (2) By Decision 2008/158/EC¹⁴, the application of the measures referred to in Article 2 of Decision 2002/148/EC, which had been extended until 20 February 2004 by Article 1 of Decision 2003/112/EC¹⁵, until 20 February 2005 by Article 1 of Decision 2004/157/EC¹⁶, until 20 February 2006 by Article 1 of Decision 2005/139/EC¹⁷, until 20 February 2007 by Article 1 of Decision 2006/114/EC¹⁸ and until 18 February 2008 by Article 1 of Decision 2007/127/EC¹⁹, was extended for a further period of twelve months until 20 February 2009.
- (3) The essential elements cited in Article 9 of the ACP-EC Partnership Agreement continue to be violated by the Government of Zimbabwe, and the current conditions in

⁹ OJ L 317, 15.12.2000, p. 3.

¹⁰ OJ L 209, 11.8.2005, p. 26.

¹¹ OJ L 317, 15.12.2000, p. 376. Internal Agreement, as last amended by the Internal Agreement of 10 April 2006 (OJ L 247, 9.9.2006, p. 48)

¹² OJ L 50, 21.2.2002, p. 64.

¹³ OJ L 317, 15.12.2000, p. 3.

¹⁴ OJ L 51, 26.2.2008, p. 19.

¹⁵ OJ L 46, 20.2.2003, p. 25.

¹⁶ OJ L 50, 20.2.2004, p. 60.

¹⁷ OJ L 48, 19.2.2005, p. 28.

¹⁸ OJ L 48, 18.2.2006, p. 26.

¹⁹ OJ L 53, 22.2.2007, p. 23.

Zimbabwe do not ensure respect for human rights, democratic principles and the rule of law.

(4) The period of application of the measures should therefore be extended,

HAS DECIDED AS FOLLOWS:

Article 1

The period of application of the measures referred to in Article 2 of Decision 2002/148/EC shall be extended until 20 February 2010. The measures shall be kept under constant review.

The letter in the Annex to this Decision shall be addressed to the President of Zimbabwe.

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, [...]

For the Council
The President
[...]

ANNEX

Brussels,

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 certain "appropriate measures" within the meaning of Article 96(2)(c) of that Agreement.

By letters of 19 February 2003, 19 February 2004, 18 February 2005, 15 February 2006, 21 February 2007 and 19 February 2008, the European Union informed you of its decisions not to revoke the "appropriate measures" and to extend the period of application until 20 February 2004, 20 February 2005, 20 February 2006, 20 February 2007, 20 February 2008 and 20 February 2009 respectively.

Twelve months later, the European Union considers that no significant progress has been made in the five areas referred to in the Council Decision of 18 February 2002.

In the light of the above, the European Union does not consider that the appropriate measures can be revoked and has decided to extend their period of application until 20 February 2010.

The European Union would once again emphasise that it is not penalising the Zimbabwean people and that it will continue its contribution to operations of a humanitarian nature and projects in direct support of the population, in particular projects in the social sectors, democratisation, respect for human rights and the rule of law, which are not affected by these measures.

The European Union wishes to reiterate that the application of appropriate measures within the meaning of Article 96 of the ACP-EC Partnership Agreement is no obstacle to political dialogue as provided for in Article 8 of that Agreement.

With this in mind, the European Union wishes to underline once again the importance that it attaches to future EC-Zimbabwe cooperation and to confirm its willingness to carry on the dialogue and make progress in the near future towards a situation where the resumption of full co-operation becomes possible.

Yours faithfully,

For the Commission

For the Council