



EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

**amending and extending the application period of Decision 2010/371/EU of 7 June 2010
concerning the conclusion of consultations with the Republic of Madagascar under
Article 96 of the ACP-EC Partnership Agreement**

EXPLANATORY MEMORANDUM

On 7 June 2010 the Council of the European Union decided to take appropriate measures against Madagascar for a period of 12 months following the conclusion of the consultations held under Article 96 of the ACP-EU Partnership Agreement (Decision 2010/371/EU¹). That decision was extended until 6 December 2011 by Council Decision 2011/324/EU of 30 May 2011².

The appropriate measures adopted with Decision 2010/371/EU include the suspension of budgetary support, of implementation of the 10th EDF National Indicative Programme and of 9th EDF activities and payments directly involving the government and its agencies. They also involved the Commission's taking over the functions of EDF National Authorising Officer. The measures did not affect contributions to humanitarian operations or certain projects directly benefiting the local population.

The mediation efforts undertaken by the Southern African Development Community (SADC) throughout the crisis with the support of the AU, the EU and other international partners, have produced a roadmap to help Madagascar find a way out of the crisis which was signed by most of Madagascar's leading political stakeholders on 17 September 2011. This document sets out the commitments entered into by the signatories with a view to a neutral, inclusive and consensus-based transition process leading to the holding of credible, free and transparent elections and the return to constitutional order in Madagascar.

The signing of the roadmap is an important first step but one that needs to be backed up by speedy and effective implementation in accordance with the milestones set out in the roadmap itself. If this happens, the Union should be prepared to support the transition process, as it said it would throughout the crisis, and, as long as the process advances constructively, it might also take measures for the gradual resumption of our development cooperation.

In view of these encouraging developments and to avoid a legal vacuum after 6 December 2011, the appropriate measures set out in the annex to Council Decision 2010/371/EU of 7 June 2010 should be amended and their validity extended for twelve months.

In order to send a clear signal from the Union that will encourage the Malagasy authorities and all stakeholders in the roadmap to redouble their efforts to implement it, it is proposed that another letter be sent to the interim President informing him of this decision and setting out in a schedule of mutual commitments the measures that the EU undertakes to adopt as soon as the Malagasy party has fulfilled its commitments in terms of the key transition milestones or of those that may emerge by agreement in the course of any political dialogue between the two parties.

The decision to be adopted may be reviewed at any time, making it possible to amend it in the light of political developments and progress or otherwise in implementation of the roadmap.

¹ OJ L 169, 3.7.2010, p. 13.

² OJ L 146, 1.6.2011, p. 2.

Proposal for a

COUNCIL DECISION

amending and extending the application period of Decision 2010/371/EU of 7 June 2010 concerning the conclusion of consultations with the Republic of Madagascar 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,

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 2000³, and revised in Ouagadougou, Burkina Faso, on 22 June 2010⁴, 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 Agreement⁵, and in particular Article 3 thereof,

Having regard to the proposal from the European Commission,

In agreement with the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) Decision 2010/371/EU of 7 June 2010⁶ concerning the conclusion of consultations with the Republic of Madagascar under Article 96 of the ACP-EU Partnership Agreement was adopted in order to implement appropriate measures in response to the violation of the essential elements referred to in Article 9 of the Agreement.
- (2) These measures were extended until 6 December 2011 by Decision 2011/324/EU of 30 May 2011⁷ since, after twelve months, no road map for a consensus-based transition had been signed by the Malagasy parties or endorsed by the Southern African Development Community (SADC), the African Union or the international community.

³ OJ L 317, 15.12.2000, p. 3.

⁴ OJ L 287, 4.11.2010, p. 3.

⁵ OJ L 317, 15.12.2000, p. 376.

⁶ OJ L 169, 3.7.2010, p. 13.

⁷ OJ L 146, 1.6.2011, p. 2.

- (3) Thanks to major efforts by all Malagasy political parties and the mediation of the SADC, a roadmap to end the crisis in Madagascar was signed by most of Madagascar's leading political stakeholders on 17 September 2011. This roadmap outlines the commitments entered into by the signatories with a view to a neutral, inclusive and consensus-based transition process leading to the holding of transparent, free and credible elections and the return to constitutional order in Madagascar.
- (4) Accordingly, the appropriate measures should be amended so that the Union can support the transition process, on condition that the Malagasy side fulfils its commitments in terms of the key transition milestones or of those that may emerge by agreement in the course of any political dialogue between the Malagasy government and the European Union.
- (5) The period of application of Decision 2010/371/EU, as amended by Decision 2011/324/EU, expires on 6 December. The appropriate measures as amended by this Decision should be applicable for twelve months, subject to their regular review over this period,

HAS ADOPTED THIS DECISION

Article 1

Decision 2010/371/EU, as extended by Decision 2011/324/EU, is hereby amended as follows:

- 1) the measures set out in the letter at annex to Decision 2010/371/EU of 7 June 2010 are replaced by the measures set out at annex to this Decision;
- 2) in Article 3 of Decision 2010/371/EU the second sentence is replaced by the following: 'It shall remain in force until 6 December 2012, subject to regular review during this period'.

Article 2

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

Done at Brussels,

For the Council
The President

ANNEX

Brussels,

DRAFT LETTER TO THE INTERIM PRESIDENT

Sir,

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 16 June 2011 the European Union informed you of its Decision 2011/324/EU of 30 May 2011 to extend until 6 December 2011 the appropriate measures adopted on 7 June 2010 under Article 96(2)(c) of that Agreement.

Since that date the European Union has monitored closely developments in your country and actively supported the mediation efforts brokered by the Southern African Development Community (SADC) and other African partners, which finally led to the signing on 17 September 2011 of the roadmap, as amended following the SADC summit on 11 to 12 June 2011.

The European Union welcomes the signing of the roadmap, noting that it remains ready to support the transition process politically and financially should it be called on to do so by the SADC and the African Union, and in close cooperation with the international community.

This commitment of the European Union is subject to the Malagasy party's fulfilling the commitments set out below:

Commitments of the Malagasy party	Commitments of the European Union
Signing of the roadmap	Statement by the spokesperson of HR/VP Ashton (welcoming the signing and expressing willingness to offer political and financial support for implementation of the transition, subject to its being carried out). Initial high-level contacts with the Malagasy authorities (visit of 2 Malagasy ministers). Identification/formulation of programmes financed under the 10th EDF and budget lines to support vulnerable sections of the population. Identification of development cooperation programmes and programmes to support the transition process under the 10th EDF and budget lines.

Consensually appointed prime minister and government of national unity.	Recognition of the legitimacy of Madagascar's interim President and government, opening the door to the presentation of credentials by the Union's ambassador to Madagascar. Convening of the first political-dialogue meeting under Article 8 of the Cotonou Agreement (discussion on the terms and conditions for gradually resuming cooperation). Consultation with the SADC and the AU on their support for the transition (to underpin the roadmap and the first steps of its implementation) and/or convening of the International Contact Group on Madagascar, Union's affirmative response to and active participation in coordinating the international community's joint response. Formulation of development cooperation programmes and programmes to support the transition under the 10th EDF and budget lines.
Setting up a transitional parliament and Independent National Electoral Commission (CENI) and drafting and implementing with UN support (electoral evaluation report) a credible electoral framework.	If the report of the UN electoral assessment mission is deemed satisfactory and the electoral timetable realistic: • Inclusion of Madagascar in the list of priority countries for an EU Election Observation Mission in 2012, so confirming the Union's willingness to send an EU Election Observation Mission, depending on available funds and following an exploratory mission. • Identification and formulation of electoral support measures using various instruments, in particular the Stability Instrument, taking into account available financial resources.

Adoption of an amnesty law ratified by the interim Parliament and adoption by Parliament of a law to lay down the conditions for implementing the resignation of the interim President, the Prime Minister and members of the government if they decide to stand for election.	Second political-dialogue meeting under Article 8 of the Cotonou Agreement (continuing the discussion on the terms and conditions for gradually resuming cooperation). Identification/formulation of measures to support national reconciliation and democratisation.
Holding of parliamentary and presidential elections.	Sending an EU Election Observation Mission , depending on available funds.
Proclamation of the election results and return to constitutional order.	Statement by HR/VP Ashton on the conduct and results of the elections; assessment of their credibility. If the outcome is favourable, start of the procedure for repealing the decision under Article 96 of the Cotonou Agreement and the European Commission's decision to take over the functions of NAO. Implementation of measures to resume development cooperation (EDF and budget lines).
New President, Government and Parliament take up their functions.	Union statement by HR/VP Ashton and Commissioner Piebalgs welcoming the return to constitutional order and confirming the full normalisation of EU-Madagascar relations and complete resumption of development cooperation. Repeal of the decision under Article 96 of the Cotonou Agreement and the European Commission's decision to take over the functions of the NAO.

We urge you and all Malagasy political stakeholders to persevere in your efforts to implement the roadmap as soon as possible so that the EU can support a consensus-based, neutral transition process to help Madagascar emerge from the crisis, a process that should lead to the holding of free and credible elections paving the way to a return to constitutional order.

In view of the above, the European Union has decided to replace the measures set out in the letter at annex to Decision 2010/371/EU of 7 June 2010, which was sent to you on 16 June 2010, and replace them with the following appropriate measures:

- Humanitarian and emergency aid is not affected.

- The European Commission may implement certain projects and programmes that directly benefit the population.
- Budgetary aid provided for in the 9th and 10th EDF NIPs shall remain suspended.
- Projects and programmes already under way under the 9th EDF shall continue to be implemented, except for activities and payments directly involving the government and its agencies; a revision may be possible in the light of developments in the political situation. Amendments and addendums to current contracts shall be examined on a case-by-case basis.
- Regional projects shall be evaluated on a case-by-case basis.
- The implementation of the 10th EDF NIP is subject to the Malagasy party's fulfilment of the commitments set out in the above schedule; fulfilment of these commitments will find a response from the European Union, which will gradually implement support programmes for the local population, support for the transition and, finally, fully resume development cooperation with Madagascar.

These measures will remain in force for 12 months but may be reviewed at any moment in the light of positive or negative developments in the political situation in Madagascar.

Yours sincerely,

For the European Union

Catherine ASHTON

Andris PIEBALGS