



EUROPEAN
COMMISSION

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2021/0440 (NLE)

Proposal for a

COUNCIL DECISION

repealing, on behalf of Representatives of the Governments of the Member States meeting within the Council, Council Decision 2016/394 concerning the conclusion of consultations with the Republic of Burundi under Article 96 of 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Following the deterioration of the situation in Burundi in the run-up to the legislative and presidential elections in June and July 2015, the European Union considered that the Republic of Burundi had not complied with essential elements set out in Article 9 of the ACP-EU Partnership Agreement ¹ in relation to human rights, democracy and the rule of law.

Following the consultations held in Brussels on 8 December 2015 under the article 96 of the ACP-EU Partnership Agreement, the European Union noted the replies given by the Government of Burundi and the latter's commitment to providing clarifications in respect of the questions raised and to speeding up certain judicial proceedings. The European Union nevertheless considered that the positions expressed did not comprehensively address the question of non-compliance with the essential elements of its partnership with the Republic of Burundi. Nor did these positions provide a satisfactory response to the decisions taken by the African Union's Peace and Security Council on 17 October and 13 November 2015, in particular the need for the speedy convening of a genuine and inclusive dialogue, based on respect for the Arusha Agreement.

On 13 November 2015, by Council Decision 2016/394, consultations were concluded and appropriate measures, as specified in the Annex to that Decision, were taken². These included suspension of financial support or disbursements of funds (including budgetary support) directly benefiting the Burundian administration or institutions.

Since the peaceful political transition of 2020 leading to the election of President Ndayishimiye and the designation of a new government, the EU observed a positive momentum, demonstrated by:

- A constructive engagement with Burundi in political dialogue pursuant to article 8 ACP-EU Partnership Agreement;
- Government's efforts in support of peace and stability, measures to improve good governance, freedom of media ; declarations on human rights, rule of law and fight against impunity;

¹ 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 (OJ 2000 L 317, 15.12.2000, p. 3). The ACP-EU Partnership Agreement was amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3). The application of the ACP-EU Partnership Agreement was extended by Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement (OJ L 001, 3.1.2020, p. 3) as amended by Decision No 2/2020 of the ACP-EU Committee of Ambassadors of 4 December 2020 (OJ L 420, 14.12.2020, p. 32) and Decision No 3/2021 of the ACP-EU Committee of Ambassadors of 26 November 2021 (OJ L 441, 9.12.2021, p. 3), until 30 June 2022 or until the entry into force or provisional application of the new ACP-EU Partnership Agreement, whichever comes first.

² Council Decision 2016/394 of 14 March 2016 concerning the conclusion of consultations with the Republic of Burundi under Article 96 of 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 (OJ L 73, 18.3.2016, p. 90).

- Agreement on a roadmap (“Feuille de route”) which contains commitments on part of the Burundian government in response to Council Decision 2016/394 in the areas of human rights; justice and rule of law; freedom of opinion and of the press; good governance; peace, security and democracy; business climate; environment and biodiversity;
- Large numbers of refugees voluntarily returning to Burundi;
- Resumption of cooperation with the international community and with neighbouring countries.

In view of these progress and commitments, the Heads of Mission in their report of 19 May 2021 expressed the view that the appropriate measures stated in annex of Council Decision 2016/394 were no longer relevant and thus recommended that they should be lifted.

Nonetheless, the following issues should continue to be raised within the context of the political dialogue established with Burundi under Article 8 of the ACP-EU Partnership Agreement:

- Improvement of the good governance, rule of law, human rights, business climate, as necessary basis for sustainable development;
- Liberation of political prisoners, return of members of the opposition and civil society; the political space needs to be opened and appeased, with the objective of reaching reconciliation;
- Continued efforts to strengthen media freedom;
- Reduction of arbitrary arrests; better control by the relevant authorities of politically-related violent groups (“Imbonerakure”) and the improved accountability and transparency of certain activities of the National Intelligence Service (SNR); reform of the judiciary, separation of State and Party;
- Respect of the independence of Civil Society/NGOs

The objective of this proposal is therefore to repeal decision Council Decision 2016/394, which will result in lifting the appropriate measures defined in the conclusions of Article 96 ACP-EU Partnership Agreement consultations.

- **Consistency with existing policy provisions in the policy area**

This proposal is consistent with existing policy provisions in the policy area namely:

- The New European Consensus on Development 'Our World, our Dignity, Our Future' of 8 June 2017³.
- Global Strategy for the European Union’s Foreign and Security Policy
- Joint Communication to the European Parliament and the Council: Towards a comprehensive Strategy with Africa, 9 March 2020⁴.

³ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission, The New European Consensus on Development: Our World, Our Dignity, Our Future (OJ C210, 30.06.2017 p. 1)

⁴ Joint Communication to the European Parliament and the Council, Towards a comprehensive Strategy with Africa (JOIN(2020) 4 final).

- EU Action Plan on Human Rights and Democracy 2020-2024⁵.
- EU Strategic Framework on Human Rights and Democracy, 2012⁶.
- EU Gender Action Plan III of 25 November 2020⁷.

EU cooperation is guided by the 2030 Agenda and the SDGs, the Paris Agreement, the Addis Ababa Action Agenda.

The proposal will allow to fully implement their provisions inasmuch as it will allow cooperation with the Government of Burundi while continuing to monitor concerns through the reinstated permanent political dialogue.

- **Consistency with other Union policies**

The proposal is consistent with the Commission priorities for 2019-2024 as they apply to external actions: Green Deal, digital transformation and data technologies, alliances for sustainable growth and decent jobs, better management and governance of migration, migration partnerships, and governance, peace and security. It is also consistent with the Global strategy for the foreign and security policy of the European Union of 2016.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Following the objective, content and context of the proposed measure, the substantive legal basis is Article 3 of 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, in conjunction with point 3, second sub-paragraph, of the Annex to this Agreement (hereafter: 'Internal Agreement')⁸.

- **Choice of the instrument**

Pursuant to Article 3 Internal Agreement, the position of the Member States for the implementation of Article 96 the ACP-EC Agreement, when that position concerns matters within their competence, is adopted by the Council, acting in accordance with the procedure set out in the Annex. Pursuant to point 3 of the Annex to the Internal Agreement, these measures remain in force until such time as the Council takes a decision amending or revoking the measures adopted previously, on a proposal from the Commission, in agreement with the High Representative of the Union for Foreign Affairs and Security Policy, and acting by a qualified majority in case of partial suspension.

⁵ Joint Communication to the European Parliament and the Council, EU Action Plan on Human Rights and Democracy (JOIN/2020/5 final)

⁶ EU strategic framework and EU action plan (COUNCIL 11855/12)

⁷ Joint Communication to the European Parliament and the Council, Gender Action Plan III: An Ambitious Vision on Gender Equality and Women's Empowerment for EU External Action (JOIN(2020 17 final).

⁸ 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 (OJ L 317, 15.12.2000, p. 376).

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

N/A

- **Stakeholder consultations**

This proposal has been initiated taking into account the aforementioned report from the EU Heads of Mission in Burundi, which was discussed in the Africa Working Party (COAFR) on 25 May 2021 and in the African, Caribbean and Pacific Group of States Working Party (ACP WP) on 28 May 2021. COAFR delegates acknowledged positive developments, and expressed themselves in favour of revoking the appropriate measures while stressing the importance of continuing to encourage the Burundian Government to make further progress in the area of Human Rights, rule of law and governance. The ACP Working Party delegates expressed their support to the outcome of the COAFR discussion and underlined the importance of keeping an advantage through the individual sanctions to facilitate further progress.

- **Impact assessment**

Revoking the appropriate measures is expected to build trust between the EU and Burundi and normalise relations; it could contribute to reinforce the positive forces within the Burundian power structures; allow political dialogue in sensitive subjects, increase EU influence and reinforce the EU's position in Burundi in relation to other global actors.

The lifting of the appropriate measures will allow to use the leverage offered by the Multi-Annual Indicative Programming from 2021-2027 as incentive to pursue improvements in relation to human rights, rule of law and governance.

- **Fundamental rights**

In addition, restrictive measures against persons, entities or bodies undermining democracy or obstructing the search for a political solution in Burundi will continue as per Council Decision 2015/1763⁹.

4. BUDGETARY IMPLICATIONS

No budgetary implications.

5. OTHER ELEMENTS

While this proposal envisages to lift the appropriate measures as listed in the Annex to the Council Decision 2016/394, restrictive measures under Council Decision 2015/1763 continue to be in place, and will be reviewed in the coming months as provided for by that decision.

COAFR delegates have called for a discussion on the future of the United Nations Commission of Inquiry on Burundi. Following this discussion, the UN Human Rights Council, on the basis of an EU-led resolution¹⁰, decided to establish a country-specific

⁹ Council Decision (CFSP) 2015/1763 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi (OJ L 257, 2.10.2015, p. 37).

¹⁰ Human Rights Council, Situation Human Right in Burundi, A/HRC/48/16

monitoring mandate in the form a Special Rapporteur on the human rights situation in Burundi, as a follow-up to the work done by the Commission of Inquiry.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

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, in particular Article 3 and the Annex thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Consultations with the Republic of Burundi under Article 96 of 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 2000¹¹, as amended^{12, 13} and extended¹⁴, were

¹¹OJ 2000 L 317, 15.12.2000, p. 3.

¹²Partnership 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 (OJ 2000 L 317, 15.12.2000, p. 3). The ACP-EU Partnership Agreement was amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3). The application of the ACP-EU Partnership Agreement was extended by Decision No 3/2019 No 2/2020 of the ACP-EU Committee of Ambassadors of 174 December 2019/20 to amend Decision No 3/2019 of the ACP EU Committee of Ambassadors to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement (OJ L 420001, 31.12.2020, p. 32) as amended by Decision No 2/2020 of the ACP-EU Committee of Ambassadors of 4 December 2020 (OJ L 420, 14.12.2020, p. 32) and Decision No 3/2021 of the ACP-EU Committee of Ambassadors of 26 November 2021 (OJ L 441, 9.12.2021, p. 3), until 30 June 2022 or until the entry into force or provisional application of the new ACP-EU Partnership Agreement, whichever comes first.

¹³Agreement amending for the second time 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, as first amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 3).

¹⁴Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2020/2] (OJ L 1, 3.1.2020, p. 3), as amended by Decision No 2/2020 of the ACP-EU Committee of Ambassadors of 4 December 2020 to amend Decision No 3/2019 of the ACP-EU Committee of Ambassadors to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2020/2052] (OJ L 420, 14.12.2020, p. 32) and Decision No 3/2021 of the ACP-EU Committee of Ambassadors of 26 November 2021 to amend Decision No 3/2019 of

concluded by Council Decision (EU) 2016/394¹⁵, and appropriate measures, as specified in the Annex to that Decision, were taken, following a proposal of the Commission in agreement with the High Representative of the Union for Foreign Affairs and Security Policy.

- (2) Overall, the peaceful political transition allowed by the general elections of May 2020 opened a new window of hope for the population and of opportunities for Burundi and for its relations with its partners.
- (3) Since then the Union has acknowledged positive developments made by the Burundian Government with respect to human rights, good governance and the rule of law, and commitments taken in its roadmap (“Feuille de route”) towards further improvements in these areas.
- (4) A government committed to implementing the reforms necessary for the development and stability of the country was established, and encouraging progress towards implementing the commitments laid down in Decision (EU) 2016/394 has been made.
- (5) In line with the assessment of the Commission, in agreement with the High Representative of the Union for Foreign Affairs and Security Policy, the reasons for the adoption of Decision (EU) 2016/394, as set out in that decision, are no longer in place. Hence, that decision should be repealed on behalf of the Member States for matters falling within their competence.
- (6) Persisting challenges in the areas of human rights, good governance and the rule of law, remain, and further progress by the Burundian authorities is needed, including through the implementation of the roadmap, and in the framework of the ongoing political dialogue.
- (7) Burundi remains fragile and the elected authorities need the support of international partners to implement the country's reform programme and development agenda.
- (8) The European Union and the Member States should support, together with other international partners, the ongoing efforts of national authorities to stabilise and consolidate the democratic institutions, promote human rights, good governance and the rule of law and implement commitments taken in its roadmap towards further improvements in these areas,

HAS ADOPTED THIS DECISION:

Article 1

Decision (EU) 2016/394 is repealed on behalf of the Member States for matters falling within their competence.

the ACP-EU Committee of Ambassadors to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2021/2175] (OJ L 441, 9.12.2021, p. 3).

¹⁵Council Decision (EU) 2016/394 of 14 March 2016 concerning the conclusion of consultations with the Republic of Burundi under Article 96 of 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 (OJ L 73, 18.3.2016, p. 90).

Article 2

This Decision shall enter into force on the date of its adoption

Done at Brussels,

*For the Council
The President*