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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 6 April 2009

**concerning the conclusion of consultations with the Islamic Republic of Mauritania under
Article 96 of the ACP-EC Partnership Agreement**

(2009/472/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000 (hereinafter referred to as the ACP-EC 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 ⁽¹⁾, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The essential elements referred to in Article 9 of the ACP-EC Agreement have been violated.
- (2) On 20 October 2008, pursuant to Article 96 of the ACP-EC Agreement, consultations started with the African, Caribbean and Pacific States (ACP) and the Islamic Republic of Mauritania during which representatives of the ruling military junta failed to present satisfactory proposals or commitments. Despite a one-month extension of the deadline, no new element has been noted,

HAS DECIDED AS FOLLOWS:

Article 1

Consultations with the Islamic Republic of Mauritania under Article 96 of the ACP-EC Agreement are hereby concluded.

Article 2

The measures set out in the annexed Letter are hereby adopted as appropriate measures under Article 96(2)(c) of the ACP-EC Agreement.

Article 3

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

This Decision shall expire on 6 April 2011. It shall be reviewed regularly at least once every six months in the light of joint monitoring missions by the Presidency of the European Union and the Commission.

Article 4

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

Done at Luxembourg, 6 April 2009.

For the Council

The President

J. POSPÍŠIL

⁽¹⁾ OJ L 317, 15.12.2000, p. 376.

ANNEX

DRAFT LETTER

Sir,

The European Union attaches great importance to the essential elements listed in Article 9 of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, hereinafter referred to as the 'ACP-EC Agreement' concerning respect for human rights, democratic principles and the rule of law, on which the ACP-EC partnership is founded.

With this in mind, following the seizure of power by the military on 6 August 2008, the European Union immediately condemned the coup d'état and called repeatedly for respect for democracy and the legal institutional framework that had been in place since 2007. In application of Article 96 of the ACP-EC Agreement and as the coup constitutes a serious violation of the essential elements listed in Article 9 of that Agreement, the European Union engaged in a political dialogue with the ruling regime that resulted in the opening of consultations aimed at studying the situation and possible consensual solutions for an early return to constitutional order.

Following the opening meeting of the consultations in Paris on 20 October 2008, the European Union did not consider that any satisfactory proposals had been made by the Mauritanian side. In a spirit of openness to dialogue, and being aware of the complexity of the political situation in Mauritania, the European Union initially proposed to the Mauritanian side that the consultations remain open for a period of one month until it came up with a potentially satisfactory solution that would enable another consultation meeting to be arranged. It also informed the ACP States and Mauritanian side that, in the absence of any new elements, the consultations would be closed and appropriate measures adopted.

At a series of meetings chaired by the African Union, the European Union and the five international organisations that made up the international contact group on Mauritania clearly identified the essential elements of a consensual political solution to the crisis.

The international contact group met again on 28 January 2009 on the eve of the effective implementation of the individual sanctions adopted by the African Union, and on 20 February 2009 to note that there were a number of proposals for putting an end to the crisis, including that by the ruling power which was considered to be still inadequate. The international contact group invited the Mauritanian parties to an inclusive national political dialogue under the auspices of the President of the African Union in order to secure a consensual return to constitutional order.

Appropriate flanking measures for a return to constitutional order

In the light of the above, the European Union has decided to bring the consultation period to an end and to adopt, under Article 96(2)(c) of the ACP-EC Agreement, the appropriate measures described below. Starting from the unsatisfactory situation at present and the fact that a large part of cooperation is already being put on ice, these appropriate measures aim at a gradual reopening of cooperation in response to the following steps towards a consensual return to constitutional order:

1. Present situation and immediate measures.
2. A consensual solution for ending the crisis consistent with the essential elements proposed by the international community, in particular the establishment in the context of inclusive and open political dialogue of an electoral framework for the holding of free, transparent and representative presidential elections, organised by credible institutions, under the auspices of a neutral government.
3. The actual and irreversible implementation of the solution for ending the crisis referred to above.
4. Mauritania's full return to constitutional order. That situation will pertain when a legitimate Head of State is in power and the Constitution is in force and respected.

1. Present situation and immediate measures

The measures described below are adopted. The restrictions on cooperation will not affect humanitarian aid or direct aid to the people of Mauritania and Mauritanian civil society.

The political dialogue provided for under Article 8 of the ACP-EC Agreement will be continued with all the Mauritanian parties in parallel with the appropriate measures as indicated in Annex VII, Article 2(5) of the ACP-EC Agreement. This dialogue will be conducted in coordination with the International Contact Group on Mauritania and may be stepped up once a consensual solution for a return to constitutional order has been accepted.

- A. The implementation of ongoing projects and of the 10th EDF indicative programme, subject to the exceptions and modifications below, is suspended pending the gradual resumption of cooperation under the conditions set out below.
- B. The European Commission reserves the right to take over immediately the duties of the EDF National Authorising Officer on its own account.
- C. In so far as the monitoring of developments and sectoral policy decisions implemented by the *de facto* but not *de iure* regime affect ongoing cooperation projects and in the hope of a future resumption of cooperation in the light of an internationally acceptable solution to the crisis, Commission departments will continue to take part in the dialogue on sectoral policies in Mauritania at a technical level so long as such dialogue is not regarded as recognition of the legality of the regime installed following the coup d'état of 6 August 2008.
- D. Payments relating to ongoing contracts will be honoured in accordance with the relevant financing decisions. This concerns the following projects:
- Rosso-Boghé and Kaedi-Gouraye roads and technical assistance to the Transport Ministry,
 - 'rehabilitation of the Adrar oasis' project (closure of ongoing commitments),
 - Water Facility: continuation of three ongoing contracts,
 - Energy Facility: continuation of ongoing contracts,
 - NAO support programme: necessary measures for programme completion,
 - regional solar programme: continuation of ongoing projects in Mauritania,
 - civil society support programme. Continued implementation of governance-related activities under calls for proposals managed directly by the European Commission,
 - programme to support the national road maintenance body (ENER): continuation of ongoing contractual commitments only,
 - grant contract under the regional B envelope for the rehabilitation of flooded areas in the Senegal river region,
 - support to local authorities (non-EDF): project to improve municipal water management in Nouakchott and partnership to support the school system in the Bousteila municipality,
 - Zazou sanitation project (non-EDF, NGO cofinancing).
- E. New contracts may be signed for the following programmes in accordance with the financing agreements:
- launch of local calls for proposals in the 'non-State actors and democracy and human rights' area (non-EDF). Calls for proposals for the benefit of local authorities remain suspended,
 - implementation of the migration management support project under ACP 9 EDF regional funding,

- implementation of the 'refugee return support' project in coordination and liaison with the Commission's Humanitarian Aid Office (ECHO) provided conditions in Mauritania allow implementation and given compliance with the terms of contract.

F. New projects may be appraised in the following areas:

- as part of the proposed response to the food crisis through mobilisation of the 10th EDF regional B envelope, a targeted operation to support inhabitants may be programmed for a total of EUR 2 080 000 to be carried out by an international organisation and/or NGO provided the activity does not involve direct aid to the administration, the state or state agencies,
- programming of the envelope allocated to Mauritania under the new Food Facility and the Food Security thematic line involving agricultural support projects that can be implemented by international organisations and/or NGOs,
- the 10th EDF National Indicative Programme set aside an indicative amount of EUR 40 million in budgetary support. That project may not be appraised before a full return to constitutional order as described in point 4, subject to compliance with the general eligibility conditions required for implementation of programmes of this type,
- the indicative amount of this programme is reduced to EUR 25 million with immediate effect. EUR 10 million of the EUR 15 million committed will be kept in reserve for possible election support in the framework of a constitutional solution to the crisis in line with the international community's demands. The remaining EUR 5 million will be kept in reserve, inter alia, for any humanitarian crises resulting from the crisis caused by the coup d'état of 6 August 2008,
- by way of exception, the EUR 8 million migration management support programme included in the National Indicative Programme will be appraised before any resumption of cooperation on the basis of objectives and priorities which have not yet been set.

2. Consensual solution accepted

This situation implies that an actual agreement exists with the Mauritanian parties as described in the Introduction, in point 2.

G. The following projects will be unblocked:

- Nouadhibou ore port. Negotiation and signing of the contract for renovation of the port in so far as this is allowed by the rules in force and the results of the tender. Since the non-extendable deadline for execution of this project is 31 December 2011, there is a real risk that financing for the project (EUR 45 million) will be lost. The Commission will consider all possible ways of minimising that risk, which is increasing over time,
- reprogramming of a project to clear the port of Nouadhibou of wrecks following the transfer to the 10th EDF from 31 December 2008 of the Stabex funds earmarked for that purpose (EUR 23 million). But for the coup d'état, a contract for the project would have been signed before the end of 2008. Procedures for reprogramming and appraisal of the new project will commence forthwith in order to move to the implementation phase as soon as possible once the political situation allows (consensual solution accepted),
- launch of previously suspended local calls for proposal for the benefit of local authorities.

3. Implementation of the solution for ending the crisis

This situation involves irreversibly implementing the consensual solution for ending the crisis as described in point 3.

H. A further resumption of cooperation will be effected. This may include:

- possible support for and observation of new elections,

- continued implementation of the justice support programme,
- implementation of the EU institution-building programme for local authorities and their services,
- implementation of all projects and programmes signed or planned under the 8th and 9th EDFs but not yet contracted out.

4. Full return to constitutional order

- I. Mauritania's full return to constitutional order will enable all the restrictions listed above to be lifted in accordance with the fourth paragraph of Article 96(2)(a) of the ACP-EC Agreement. That will allow the 10th EDF indicative programme (EUR 156 million) to be implemented in full, taking account of the possible need to revise the programme in view of the negative social, economic and political impacts of the coup d'état of 6 August 2008.

Monitoring of appropriate measures

The European Union will continue to monitor the situation in Mauritania closely and may support the introduction of a consensual political solution to the crisis if it is based on the abovementioned essential elements in accordance with the demands of the international community. Regular monitoring missions will be organised for that purpose.

The European Union reserves the right to review and revise the above measures in the light of developments in the situation in Mauritania.

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

For the Commission

José Manuel BARROSO

For the Council

J. POSPÍŠIL
