

# DECISIONS

## COUNCIL 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**

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 2000 <sup>(1)</sup> and revised at Ouagadougou, Burkina Faso, on 22 June 2010 <sup>(2)</sup> (the 'ACP-EU 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 Agreement <sup>(3)</sup>, and in particular Article 3 thereof,

Having regard to the proposal from the European Commission, in conjunction with the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) The Republic of Burundi is not complying with the essential elements referred to in Article 9 of the ACP-EU Partnership Agreement.
- (2) On 8 December 2015, pursuant to Article 96 of the ACP-EU Partnership Agreement, consultations started with the Republic of Burundi, in the presence of representatives of the African, Caribbean and Pacific Group of States, including the African Union, the East African Community and the United Nations.
- (3) During these consultations, the representatives of the Government of Burundi presented proposed commitments. Those proposed commitments are deemed unsatisfactory.
- (4) Consequently, the consultations opened under Article 96 of the ACP-EU Partnership Agreement should be closed and appropriate measures adopted for the implementation of those commitments,

HAS ADOPTED THIS DECISION:

### *Article 1*

Consultations with the Republic of Burundi under Article 96 of the ACP-EU Partnership Agreement are hereby closed.

### *Article 2*

The measures set out in the letter in the Annex are hereby adopted as appropriate measures under Article 96(2)(c) of the ACP-EU Partnership Agreement.

<sup>(1)</sup> OJ L 317, 15.12.2000, p. 3.

<sup>(2)</sup> OJ L 287, 4.11.2010, p. 3.

<sup>(3)</sup> OJ L 317, 15.12.2000, p. 376.

*Article 3*

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

It shall be reviewed regularly at least once every six months, preferably in the light of joint monitoring missions by the European External Action Service and the Commission.

Done at Brussels, 14 March 2016.

*For the Council*  
*The President*  
F. MOGHERINI

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## ANNEX

## DRAFT LETTER

Sir,

The European Union considers that several of the essential elements set out in Article 9 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 2000 (the 'ACP-EU Partnership Agreement') have not been complied with by the Republic of Burundi. On several occasions, particularly during the intensified dialogue under Article 8 of the ACP-EU Partnership Agreement, it has expressed its concern about the failure to comply with certain principles of human rights, democracy and the rule of law.

The European Union accordingly entered into consultations with the Government of Burundi under Article 96 of the ACP-EU Partnership Agreement in order to examine those concerns and ways they could be remedied.

After the Government of Burundi accepted the European Union's invitation, consultations were opened in Brussels on 8 December 2015.

During the meeting, the parties discussed the necessary measures to ensure a swift return to compliance with democratic principles and values, human rights and the rule of law, on the basis of the essential elements of the ACP-EU Partnership Agreement and the principles set out in the Arusha Agreements. There were discussions on nine subjects on which the European Union expected specific and concrete commitments from the Government of Burundi.

The European Union took note of the responses given by the Burundian side during the consultations, particularly with regard to:

- the reopening of private media and the settlement of disputes relating to private media under the Press Act;
- the freedom to exercise the profession of journalism;
- the freedom and safety of civil society and of defenders of human rights;
- the management of pending legal cases in accordance with the commitments requested during the intensified dialogue under Article 8 of the ACP-EU Partnership Agreement;
- the situation of prisoners arrested during protests;
- the pursuit of investigations concerning allegations of torture and extra-judicial killings;
- the holding of an inter-Burundian dialogue, in consultation with the East African Community and the African Union, or another international mediator, to facilitate a return to democratic principles;
- the disarmament and disbandment, with the support of international observers, of any armed organisation other than the national police and defence forces;
- the implementation of a crisis-resolution plan, in accordance with a timetable to be drawn up.

In its conclusions following the consultations, the European Union took note of the commitment expressed by the Government of Burundi to provide clarifications and to speed up certain legal proceedings. However, at the same time, the European Union found that the responses given by the representatives of the Government of Burundi were not sufficient to address comprehensively the issue of non-compliance with essential elements of its partnership with the Republic of Burundi, or to provide a satisfactory response to the decisions taken by the African Union's Peace and Security Council on 17 October and 13 November 2015.

The European side therefore decided to close the consultations and to adopt appropriate measures under Article 96(2)(c) of the ACP-EU Partnership Agreement.

The return to compliance with the essential elements of the ACP-EU Partnership Agreement will be accompanied by the gradual resumption of normal cooperation ties. The schedule of commitments attached in the Annex clearly sets out the commitments expected, divided into four main areas which will be simultaneously assessed, and the appropriate measures that respond to the progress made. You will note that we are expecting to review and adjust the terms and conditions of financing and payment of our support to the Burundian contingent taking part in the AMISOM Mission (financed by the European Development Fund (EDF) under the African Peace Facility) in consultation with the African Union.

The European Union reserves the right to amend those measures in the light of the changing political situation and the implementation of commitments.

As part of the procedure under Article 96 of the ACP-EU Partnership Agreement, the European Union will continue to monitor closely the situation in Burundi throughout the period of validity of the decision taken under Article 96 of the ACP-EU Partnership Agreement. During this period, a dialogue will be conducted with the Government of Burundi in order to support the process of returning to compliance with the essential elements of the ACP-EU Partnership Agreement. Regular reviews of the situation will be conducted by the European Union, with the first to take place within six months. The Council may review the decision taken under Article 96 in the light of how the situation develops and whether or not the commitments are implemented.

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

*For the Council*  
F. MOGHERINI  
*President*

*For the Commission*  
N. MIMICA  
*Commissioner*

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## ANNEX

## SCHEDULE OF COMMITMENTS

Commitments made by the Government of Burundi	Appropriate measures of the European Union
<p>Failure to make a commitment (situation observed at the time that consultations under Article 96 of the ACP-EU Partnership Agreement were closed): the essential elements referred to in Article 9 of the ACP-EU Partnership Agreement — (i) human rights, (ii) democratic principles and (iii) the rule of law — are not being complied with.</p>	<p>The European Union <sup>(1)</sup> will continue its support for the people of Burundi. It will continue to finance ongoing contracts and emergency operations, where such measures provide direct support to the local population and civil society and relate to the fight against poverty and access to basic services.</p> <p>In this respect, two emergency programmes (access to health care — EUR 40 000 000, and rural development/nutrition — EUR 15 000 000) will be presented to the European Union decision-making bodies for approval. The implementation of these projects is expected to be entrusted to non-governmental organisations and/or international agencies.</p> <p>Humanitarian operations (including support for refugees) will continue to be implemented to meet proven needs, subject to access to the people affected.</p> <p>However, financial support or disbursements of funds (including budgetary support) directly benefiting the Burundian administration or institutions are suspended.</p> <p>The financing conditions and the procedures for payment of allowances to Burundian military personnel taking part in the AMISOM Mission, as well as the contribution paid to the Government of Burundi for pre-deployment costs (financed by the EDF under the African Peace Facility), will be reviewed and adjusted in consultation with the African Union.</p> <p>Programmes and financing to encourage regional integration, irrespective of how they are implemented, are not covered by these measures.</p>
<p>Areas in which commitments from the Government of Burundi are expected, and corresponding indicators. These areas, and the corresponding indicators, will be assessed as a whole, as they develop.</p> <p>1/ Political agreement on a crisis-resolution plan</p> <p>Commitments expected</p> <p>1.1. Participation, in consultation with the East African Community and the African Union, or another international mediator, in a dialogue to facilitate a return to democratic principles.</p> <p>Indicator:</p> <p>— Holding of an inclusive political dialogue — comprising all sections of political life in accordance with the procedures set out by the international mediator and in compliance with the present Decision, leading to a crisis-resolution plan or any consensual and peaceful solution to the crisis, in keeping with the Arusha Agreements, that provides for a return to the rule of law and inclusive governance.</p>	<p>Apart from programmes currently being implemented or identified, the uncommitted balance of the 11th EDF is EUR 322 000 000 <sup>(2)</sup>. These funds remain available to Burundi and could be mobilised according to the progress made in the implementation of the commitments. According to the assessment of progress and commitments made by the Government of Burundi in four areas (de-escalation, handling of judicial cases, political dialogue and the implementation of a crisis-resolution plan), appropriate measures will gradually be taken according to the following steps:</p> <p>1/ Depending on whether positive progress is made, in addition to the continuation of direct support to the most vulnerable parts of the population, financial commitments to strengthen the capacities of the government and institutions will be considered by the competent European Union services on a case-by-case basis, according to how urgent and relevant they are.</p>

Commitments made by the Government of Burundi	Appropriate measures of the European Union
	<p>2/ In the event of more significant progress, the European Union will assess the disbursement dossier of the last tranche of budgetary support under the 10th EDF (maximum of EUR 11 500 000).</p> <p>The adoption of projects (apart from budgetary support) initially planned for 2015 could be re-launched.</p>
<p>1.2. Continuation of disarmament with the support of international observers; only the national police and the defence forces are responsible for maintaining law and order in compliance with the rule of law.</p> <p>Indicator:</p> <p>— Decisions of the African Union's Peace and Security Council on disarmament (in particular the decision of 13 June 2015 on the deployment of military experts) and United Nations Security Council resolutions (in particular that of 12 November 2015) are implemented.</p>	<p>3/ In order to prepare for and support the crisis-resolution plan, a more comprehensive implementation of the measures would help kick-start the governance component of the 11th EDF National Indicative Programme (NIP) and budgetary support programme.</p> <p>The programme planned for 2016 in the energy sector is therefore also kick-started.</p> <p>4/ Finally, the implementation of all the measures would allow the unrestricted implementation of all the European Union programmes and funds planned for Burundi under the 11th EDF NIP (EUR 432 000 000).</p>
<p>2/ Measures to de-escalate tension and open up the political process</p> <p>Commitments expected</p> <p>2.1. Reopening of private media and settlement of disputes relating to private media under the Press Act.</p> <p>Indicator:</p> <p>— Independent radio and television stations broadcast throughout the country to ensure pluralism of information.</p> <p>2.2. Freedom to exercise the profession of journalism in complete safety.</p> <p>Indicator:</p> <p>— Concrete action is taken to counter the intimidation of journalists</p> <p>— Investigation measures are taken in relation to the prosecution of perpetrators of violence against journalists; the situation of journalists is addressed in accordance with the Press Act and in a manner compatible with freedom of expression.</p> <p>2.3. Freedom and safety of civil society and defenders of human rights.</p> <p>Indicator:</p> <p>— Repeal of the Decree of 23 November 2015 suspending the activities of certain civil society organisations; the end of intimidation of defenders of human rights.</p>	
<p>3/ Measures connected to judicial cases</p> <p>Commitments expected</p> <p>3.1. Handling of pending legal cases, including those raised during the intensified Article 8 dialogue.</p>	

Commitments made by the Government of Burundi	Appropriate measures of the European Union
<p>Indicator:</p> <p>— The holding of appeal hearings in the cases concerned (MSD, F. Bamvuginyumvira, L. Ngendakumana) in a manner that complies with the rules and the rights of the defence.</p> <p>3.2. The cases of prisoners connected to protests and security incidents are handled in accordance with the Burundian Criminal Code and international standards.</p> <p>Indicator:</p> <p>— Drafting of legal acts confirming the release of protesters who have not committed acts of violence, and the lifting of warrants for their arrest where these exist. The appearance before a judge of all protesters still to be prosecuted, within the statutory time limits and in accordance with Burundi's laws, including the international standards ratified by Burundi on the right to a fair trial.</p> <p>3.3. Investigations into allegations of torture and extra-judicial killings, and follow-up on their conclusions.</p> <p>Indicator:</p> <p>— Publication of credible investigation reports, carried out with the participation of international experts, on all cases of alleged torture, sexual violence, disappearances and extra-judicial killings, and adoption of measures against those responsible for such acts.</p>	
<p>4/ Implementation of the crisis-resolution plan</p> <p>Commitment expected</p> <p>Implementation of the crisis-resolution plan according to the agreed timetable</p> <p>The conclusions of the international mediators and the crisis-resolution plan are implemented according to the timetable and procedures set out in the plan.</p>	
<p>(<sup>1</sup>) Including the European Investment Bank (EIB).</p> <p>(<sup>2</sup>) EUR 55 million of the 11th EDF National Indicative Programme has already been committed in 2014, and the two emergency projects being prepared to help the people of Burundi will also be worth a total of EUR 55 million.</p>	