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2011/0178 (NLE)

Proposal for a

COUNCIL DECISION

concerning the conclusion of consultations with the Republic of Guinea- Bissau under Article 96 of the Cotonou Agreement

EXPLANATORY MEMORANDUM

On 31 January 2011 the European Union decided to open consultations with the Republic of Guinea-Bissau under Article 96 of the revised Cotonou Agreement. This decision was taken in the wake of the events of 1 April 2010. On that day, on the orders of the Deputy Chief of Staff of the Armed Forces, General Antonio Indjai, a group of mutinous soldiers arrested Chief of Staff José Zamora Induta and the Prime Minister of Guinea-Bissau. Following the mutiny General Indjai became de facto Chief of Staff before being officially appointed on 25 June 2010 by decree of the President, on a proposal from the government.

The appointment on 8 October 2010 of Admiral Bubo Na Tchuto as head of the navy constituted a further setback to good governance in Guinea-Bissau. Rear Admiral Na Tchuto played a destabilising role in the aftermath of the mutiny of 1 April and is the subject of sanctions imposed by international partners for his suspected involvement in illegal activities.

The European Union regards the mutiny of 1 April 2010 and the subsequent appointment of its main instigators to high-ranking posts in the military hierarchy as a serious and evident breach of the essential elements of Article 9 of the Cotonou Agreement (respect for democratic principles) and as a case of special urgency within the meaning of Article 96(2)(b). A letter was therefore sent to the Guinea-Bissau authorities on 2 February 2011 to invite them to hold consultations.

The Guinea-Bissau government set up a preparatory committee for the consultations with a view to meeting the concerns raised in the European Union's letter. By the date of the consultations some progress had taken place: acceptance of the ECOWAS roadmap for Security Sector Reform, adopted by the ECOWAS summit on 23-24 March 2011, adoption by the government of an operational programme to implement the SSR package and official launch and actual start-up of the Angolan mission (MISSANG) to support the reform.

The opening meeting of the consultations took place in Brussels on 29 March 2011. The Guinea-Bissau delegation comprised the Prime Minister and members of the government. A delegation of the ACP party, including countries friendly to Guinea-Bissau, the AU, the ECOWAS and the CPLP, took part as observers.

In the course of the meeting, the participants were informed of the proposals of the Guinea-Bissau side for progressively ensuring the primacy of civilian authority, improving democratic governance, guaranteeing the safeguarding of constitutional order and the rule of law, and tackling impunity and organised crime.

The undertakings made by the Guinea-Bissau side comprise, in particular:

- the conduct and conclusion of judicial investigations and proceedings that are fully independent and carried out under appropriate logistic and security conditions, relating to the assassinations in March and June 2009;

- the effective implementation of the security sector reform based on the strategy adopted by the national parliament and the legislative package drawn up with the support of the EU's CSDP mission;

- the renewal of the military hierarchy to ensure the appointment to senior command of persons not involved in unconstitutional or illegal conduct or acts of violence, in

conformity with the conclusions and recommendations of the ECOWAS roadmap for Security Sector Reform;

- the approval of and assistance to an experts' mission to support security sector reform and the protection of political figures, to be carried out with the support of ECOWAS, the CPLP and/or other partners;

- the preparation, adoption and effective implementation of national operational plans to implement Security Sector Reform and to combat drug trafficking;

- the improvement of the administrative and financial management of civilian and military employees, and measures to combat money laundering.

The European Union noted these undertakings in its conclusions on the consultations. It urged the representatives of the Republic of Guinea-Bissau to undertake judicial investigations and proceedings into the events of 1 April 2010 to reinforce efforts to tackle the problem of impunity and to specify a more detailed timetable for implementation of these undertakings in compliance with the timeframe set out in the ECOWAS roadmap.

With a view to safeguarding the essential elements referred to in the Cotonou Agreement, it is proposed to adopt appropriate measures under Article 96(2)(c) of the Agreement for the gradual resumption of cooperation in order to support consolidation of the rule of law and democratic governance (see annexed draft letter).

In view of the above, and in accordance with Articles 9 and 96 of the revised Cotonou Agreement, the Commission, in conjunction with the High Representative of the Union for Foreign Affairs and Security Policy, proposes that the Council conclude the consultations with Guinea-Bissau and adopt the attached Decision.

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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 ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000[1] (hereinafter referred to as the 'Cotonou Agreement'), as revised by the agreement signed in Luxembourg on 25 June 2005[2], and in particular Article 96 thereof,

Having regard to the Internal Agreement on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement[3], and in particular Article 3 thereof,

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

Whereas:

(1) The essential elements referred to in Article 9 of the Cotonou Agreement have been violated.

(2) On 29 March 2009, pursuant to Article 96 of the Cotonou Agreement, consultations started with Guinea-Bissau in the presence of representatives of the African, Caribbean and Pacific Group of States, including the African Union, ECOWAS and the CPLP (**Community of Portuguese Language Countries)** during which representatives of the Guinea-Bissau government presented satisfactory proposals and undertakings.

(3) Consequently, the consultations opened under Article 96 of the Cotonou Agreement should be closed and appropriate measures adopted for the performance of these undertakings.

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1 OJ L 317, 15.12.2000, p. 3.
2 OJ L 287, 28.10.2005, p. 4.
3 OJ L 317, 15.12.2000, p. 376, as amended in OJ L 247, 9.9.2006, p. 48.

HAS ADOPTED THIS DECISION:

Article 1

Consultations with Guinea-Bissau under Article 96 of the Cotonou 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 Cotonou Agreement.

Article 3

This Decision shall enter into force on the date of its adoption. It shall be valid for 18 months from the date of its adoption by the Council. 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.

Article 4

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

Done at Brussels,

For the Council
The President

ANNEX

Draft letter

President of the Republic of Guinea-Bissau,

Prime Minister of the Republic of Guinea-Bissau, Sirs,

The European Union regards the mutiny of 1 April 2010 and the subsequent appointment of its main instigators to high-ranking posts in the military hierarchy as a serious and evident breach of essential elements set out in Article 9 of the Cotonou Agreement. It has on several occasions expressed concern about the failure to ensure the primacy of civilian authority and to abide by the principles of good democratic governance in Guinea-Bissau.

In application of Article 96 of the Cotonou Agreement, the European Union has therefore engaged in a political dialogue with the government in order to study the situation and possible solutions. Following the agreement of the Guinea-Bissau government, the consultations opened in Brussels on 29 March 2011.

During the meeting the participants discussed the necessary measures for ensuring the primacy of civilian authority, improving democratic governance, guaranteeing the safeguarding of constitutional order and the rule of law and tackling impunity and organised crime. Prior to the consultations, the Guinea-Bissau authorities submitted a memorandum with proposals designed to assuage the concerns raised in the European Union's letter.

The European Union noted these undertakings in the course of the consultations, particularly as regards:

- the conduct and conclusion of judicial investigations and proceedings that are fully independent and carried out under appropriate logistic and security conditions, relating to the assassinations in March and June 2009;

- the effective implementation of the security sector reform based on the strategy adopted by the national parliament and the legislative package drawn up with the support of the EU's CSDP mission;

- the renewal of the military hierarchy to ensure the appointment to senior command of persons not involved in unconstitutional or illegal conduct or acts of violence, in conformity with the conclusions and recommendations of the ECOWAS roadmap for Security Sector Reform;

- the approval of and assistance to an experts' mission to support security sector reform and the protection of political figures, to be carried out with the support of ECOWAS, the CPLP and/or other partners;

- the preparation, adoption and effective implementation of national operational plans to implement security sector reform and to combat drug trafficking;

- the improvement of the administrative and financial management of civilian and military employees, and measures to combat money laundering.

In its conclusions following the consultations the European Union urged the representatives of Guinea-Bissau to undertake judicial investigations and proceedings into the events of 1 April 2010 to reinforce efforts to tackle the problem of impunity and to specify a more detailed timetable for implementation of these undertakings in compliance with the timeframe set out in the ECOWAS roadmap.

The European Union found the undertakings made by Guinea-Bissau broadly encouraging Accordingly, it was decided to close the consultations and to adopt appropriate measures under Article 96(2)(c) of the Cotonou Agreement.

The gradual resumption of cooperation with a view to safeguarding the essential elements referred to in the Cotonou Agreement will take place in the following stages as set out in Annex I (schedule of commitments):

1. The European Commission is continuing to finance ongoing contracts, humanitarian and emergency operations, measures in direct support of the people of Guinea-Bissau and projects to combat transnational crime and support the consolidation of democracy Guinea-Bissau is eligible for the EDF MDG initiative. The allocation of funding under regional projects covering Guinea-Bissau and from other EDF facilities (water, energy, etc.) and the launch of preparatory measures for the implementation of future projects will be examined on a case-by-case basis.

2. The suspension of projects and programmes in the 'Conflict Prevention' focal sector (with the exception of PROJUST, PARACEM and disbursement of contributions to the RSS pension fund under the PARSS programme to support reform of the security sector), the 'Water and Energy' focal sector (Bissau Electrification Project) and outside the focal sectors (the Sustainable Management of Road Transport Project and Private Sector Support Programme) will be lifted as soon as the following take place:

   (i) submission of a detailed timetable for implementation of security sector reform undertakings in compliance with the ECOWAS roadmap.

   (ii) the finalisation, adoption, enactment and publication of the security sector reform legislative package drawn up with the support of the EU's CSDP mission;;

   (iii) the approval of and assistance to an experts' mission to support security sector reform and the protection of political figures, to be carried out with the support of ECOWAS, the CPLP and/or other partners, and;

   (iv) the preparation, adoption and a start to effective implementation of national operational plans to implement security sector reform and to combat drug trafficking and money laundering.

3. Disbursement of the EDF's first contribution to the retirement pension fund for elderly surplus staff in the security sector (PARSS programme, 9th EDF), conditional on payment of the government's and ECOWAS's contributions, and resumption of the new support programme for the justice sector (PROJUST, 'Conflict Prevention' focal sector) will be subject to:

(i) the conduct and conclusion of judicial investigations and proceedings that are fully independent and carried out under appropriate logistic and security conditions, relating to the assassinations in March and June 2009, and;

(ii) improvements in the administrative and financial management of public, civilian and military employees in Guinea-Bissau.

4. The European Union will envisage resuming budget support and preparing a new support programme for civil and military reforms (PARACEM, 'Conflict Prevention' focal sector), after:

(i) continued effective implementation of national operational plans to implement security sector reform and to combat drug trafficking and money laundering;

(ii) the commencement of judicial investigations and proceedings into the events of 1 April 2010;

(iii) renewal of the military hierarchy to ensure the appointment to senior command of persons not involved in unconstitutional or illegal conduct or acts of violence, in conformity with the conclusions and recommendations of the ECOWAS roadmap for Security Sector Reform.

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

As part of the procedure under Article 96 of the Cotonou Agreement, the European Union will continue to monitor the situation in Guinea-Bissau closely over a period of 18 months. During this period an enhanced dialogue will be pursued with the government under Article 8 of the Cotonou Agreement with a view to safeguarding the essential elements referred to in the Agreement. Regular reviews will be conducted by the EU; the first monitoring mission should in principle take place within six months.

The two parties undertake to hold a regular political dialogue under Article 8 of the Cotonou Agreement on reforms in the area of political, judicial and economic governance, paying particular attention to the reform of the security sector, measures to tackle impunity and organised crime, particularly drug trafficking.

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

For the Council	For the Commission
C. ASHTON	A. PIEBALGS
President	Commissioner

Annex I: Schedule of commitments

Commitments by partners	
Guinea-Bissau	European Union
STATE OF PLAY	Financing continues for ongoing contracts, humanitarian and emergency operations, measures in direct support of the people of Guinea-Bissau and projects to combat transnational crime and support the consolidation of democracy Programmes and actions covered by appropriate measures have been frozen. The country is eligible for the MDG initiative. The allocation of funding under regional projects covering Guinea-Bissau and from other EDF facilities (water, energy, etc.) and the launch of preparatory measures for the implementation of future projects to be examined on a case-by-case basis by departments.
FIRST STEP • Submission of a detailed timetable for implementation of security sector reform undertakings in compliance with the ECOWAS roadmap • Finalisation, adoption, enactment and publication of the security sector reform legislative package[1] drawn up with the support of the EU's CSDP mission • Approval of and assistance to an experts' mission to support security sector reform and the protection of political figures, to be carried out with the support of ECOWAS, the CPLP and/or other partners • Preparation, adoption and start to effective implementation of national operational plans to implement security sector reform and to combat drug trafficking and money laundering	Resumption of projects and programmes: • in the 'Conflict Prevention' focal sector (with the exception of PROJUST, PARACEM and disbursement of contributions to the RSS pension fund under the PARSS programme) • the 'Water and Energy' focal sector (Bissau Electrification Project) • outside the focal sectors (the Sustainable Management of Road Transport Project and Private Sector Support Programme)
SECOND STEP • Conduct and conclusion of judicial investigations and proceedings that are fully independent and carried out under	• Resumption of the support programme for the justice sector (PROJUST, 'Conflict

appropriate logistic and security conditions relating to the assassinations in March and June 2009 • Improvements in the administrative and financial management of public, civilian and military employees in Guinea-Bissau	Prevention' focal sector) • Disbursement of the contribution to the retirement pension fund for elderly surplus staff in the security sector (PARSS programme, 'Conflict Prevention' sector), in so far as the government and ECOWAS provide the necessary funding
THIRD STEP • Effective implementation of national operational plans to implement security sector reform and to combat drug trafficking and money laundering • Commencement of judicial investigations and proceedings into the events of 1 April 2010 • Renewal of the military hierarchy to ensure the appointment to senior command of persons not involved in unconstitutional or illegal conduct or acts of violence, in conformity with the conclusions and recommendations of the ECOWAS roadmap for Security Sector Reform	Resumption of programmes: • to support reform of the civil and military administration – PARACEM ('Conflict Prevention' focal sector) • for budgetary support

[1] *Security sector reform legislative package (for guidance):*

Strategic National Defence Concept, National Defence Act, Organisation of the Armed Forces Act, General Staff of the Armed Forces Act, Army Act, Navy Act, Air Force Act, Ministry of National Defence Act, Military Status Act (amendments to Act No 3/99), Military Service Act (amendments to Act No 4/99), Ministry for Internal Affairs Act