II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 15 November 2004

concluding the consultation procedure with the Togolese Republic under Article 96 of the Cotonou Agreement

(2004/793/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 ('the Cotonou Agreement') [1], 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 [2], and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Government of the Togolese Republic has violated the rules defined by the essential elements referred to in Article 9 of the Cotonou Agreement.

(2) On 14 April 2004, pursuant to Article 96 of that Agreement, consultations started with the ACP countries and the Togolese Republic during which the Togolese authorities gave specific undertakings designed to remedy problems identified by the European Union, to be implemented during a period of intensive dialogue lasting three months.

(3) At the conclusion of this period some substantive initiatives have been taken in respect of some of the undertakings referred to above and some undertakings have been met. Nevertheless, several important measures concerning essential elements of the Cotonou Agreement have still to be taken,

HAS DECIDED AS FOLLOWS:

Article 1

The consultations opened with the Togolese Republic under Article 96(2)(a) of the Cotonou Agreement are hereby terminated.

Article 2

The measures set out in the draft letter in the Annex are hereby adopted as appropriate measures within the meaning of Article 96(2)(c) of the Cotonou Agreement.

Article 3

The decision of 14 December 1998 addressing a letter of the Council and the Commission to the Togolese Republic is hereby repealed.

Article 4

This decision shall enter into force on the day it is adopted. It shall be published in the *Official Journal of the European Union*.

It shall be valid for 24 months from the date of its adoption by Council. It shall be regularly reviewed at least every six months.

Done at Brussels, 15 November 2004.

For the Council
The President
M. VAN DER HOEVEN

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[1] OJ L 317, 15.12.2000, p. 3.
[2] OJ L 317, 15.12.2000, p. 376.

ANNEX

FOR THE ATTENTION OF THE PRIME MINISTER, HEAD OF GOVERNMENT OF THE TOGOLESE REPUBLIC

Dear Sir,

The European Union attaches great importance to the provisions of Article 9 of the Cotonou Agreement. The ACP-EU partnership is founded on respect for human rights, democratic principles and the rule of law; these are essential elements of the Agreement and thus form the basis for relations between us.

The European Union believes that the political situation in Togo is deadlocked and that the democratic deficit and scant consideration for human rights and fundamental freedoms constitute a violation of the essential elements set out in Article 9 of the abovementioned Agreement.

In view of this Article and the current political deadlock in Togo the European Union decided on 30 March 2004 to start consultations under Article 96 of the Agreement in order to thoroughly review the situation and find a remedy if possible.

These consultations started in Brussels on 14 April 2004. Several fundamental issues were addressed, and you were able to present the Togolese authorities' point of view and their analysis of the situation. The European Union was pleased to note that Togo made certain undertakings as stated in the Annex and proposed positive steps to improve the climate for democracy and the rule of law in the country.

It was agreed that an intensive dialogue on the various points raised would be held in Togo over a period of three months, and that the situation would be assessed at the end of this period.

This regular in-depth dialogue on a list of measures to be taken in order to implement the agreed undertakings has taken place.

A number of significant measures have been taken by the Togolese authorities. In particular:

— the authorities have organised information and awareness-raising meetings with prefects and police concerning various aspects of human rights and fundamental freedoms. They have distributed instructions and circulars setting out the existing directives and rules. This has produced some positive results, confirmed by the opposition,

— the authorities have instructed the courts to bring to trial all persons remanded in custody in cases where preliminary investigations have been completed. This call for a speeding-up of procedures has led to the setting of 214 trial dates, including the cases of a number of prisoners considered political. The government ensured that lawyers had access to their clients during the preliminary inquiries. Nearly 500 prisoners were released in August, either through remittance of their sentences, or release on bail,

— access to the media, hitherto a preserve of the government and the party in power outside election campaigns, has been extended in recent weeks to opposition parties, though access is not yet balanced,

— the government has embarked on reform of the National Commission for Human Rights and the High Authority for Audiovisual and Communications,

— a new press code was adopted by the Assemblée Nationale on 24 August,

— an analysis of the justice system has been carried out with the aid of the United Nations Development Programme (UNDP),

— the government is continuing efforts towards decentralisation and recently adopted a policy letter on the subject,

— an initial meeting was held with the traditional opposition on 25 August, in order to establish a national dialogue in an organised and transparent framework.

These initiatives have undoubtedly improved respect for human rights and fundamental freedoms in your country. Nevertheless, a number of points continue to give rise to concern, especially as regards the restoration of democracy:

In this connection the European Union is anxious for the following substantive measures to be taken, which are in keeping with the undertakings annexed hereto:

— the implementation of the national dialogue in an organised and transparent framework in accordance with Undertaking 1.1,

— in the context of this dialogue, a revision of the electoral arrangements ensuring a transparent and democratic process in accordance with Undertaking 1.3,

— the establishment of a legal framework for the financing of political parties in accordance with Undertaking 1.4,

— the organisation of parliamentary and local elections in accordance with Undertakings 1.5 and 1.6,

— continuation of the process of decentralisation in accordance with Undertaking 1.7,

— continued action on political prisoners followed by their possible liberation, as stipulated in Undertaking 2.2,

— revision of the articles of association and terms of reference of the National Commission for Human Rights and the High Authority for Audiovisual and Communications in accordance with Undertakings 2.5 and 3.6,

— continued reform of the legal and justice system in accordance with the recommendations of the UNDP diagnostic study.

The European Union also attaches great importance to the continuation and consolidation of the initiatives already undertaken in the context of Undertakings 1.2, 1.4, 2.1, 2.3, 2.4, 2.6, 3.2, 3.3, 3.4 and 3.5.

In follow-up to the consultations, and in light of the undertakings given thus far and the important measures still to be put in hand, it has been decided to adopt the following appropriate measures under Article 96(2)(c) of the Cotonou Agreement:

1. continued implementation of projects financed with the unexpended balances of the sixth and seventh European Development Funds (EDF) that will meet the needs of the population and promote compliance with the essential elements of the Cotonou Agreement, namely, respect for human rights, democratic principles and the rule of law. The national programme of decentralised environmental management projects and the 1990-1994 Framework of Mutual Obligations for Stabex Funds will also be implemented;

2. institutional aid for the implementation of measures to carry out the undertakings made during the consultations may be provided from the unexpended balances of the sixth and seventh EDF funds. In this connection the Commission will, amongst other things, adopt a financing decision on the programme to carry out a fourth general population and housing census;

3. the ninth EDF allocation will be notified once electoral arrangements that will ensure transparent and democratic elections acceptable to all parties are established and a date for the holding of parliamentary elections is set. This will be the signal for the programming of resources;

4. once the ninth EDF allocation is notified, aid for preparing the elections may be given as long as the conditions stipulated in the above electoral arrangements are adhered to;

5. once free and fair parliamentary elections have been held, cooperation with the European Union will resume in full, with implementation of the ninth EDF and the 1995-1999 Framework of Mutual Obligations for Stabex Funds;

6. contributions to regional projects will be considered on a case-by-case basis;

7. humanitarian operations, trade cooperation and trade-linked preferences will not be affected.

The Presidency of the European Union and the European Commission will carry out regular joint reviews, at intervals of not more than six months.

The European Union will continue monitoring the situation in Togo closely; an enhanced political dialogue will be conducted with your Government over a 24-month monitoring period in order to ensure that it continues on the path mapped out towards democracy and the rule of law and pursues and consolidates its efforts in the field of human rights and fundamental freedoms.

If implementation of the Togolese authorities' undertakings speeds up, or on the contrary breaks down, the European Union reserves the right to adjust the appropriate measures.

I have the honour to be, Sir, yours faithfully.

Done at Brussels, 15 November 2004.

For the Commission *For the Council*

ANNEX to the ANNEX

LIST OF UNDERTAKINGS GIVEN BY THE TOGOLESE REPUBLIC

The Government of the Togolese Republic has given the following undertakings to the European Union during consultations held under Article 96 of the Cotonou Agreement.

Undertaking 1.1:

Announce immediately, to ensure that democratic principles are fully upheld, the resumption of an open, credible national dialogue with the traditional opposition and civil society in an organised and transparent framework.

Undertaking 1.2:

Guarantee all political parties, without delay, freedom of action without fear of harassment, intimidation or censorship

Undertaking 1.3:

Revise the electoral arrangements on the basis of the Lomé Framework Agreement so as to ensure transparent and democratic elections that are acceptable to all parties within six months.

Undertaking 1.4:

Ensure that all political parties have equitable access to public media and set up a fair system for the public funding of political parties.

Undertaking 1.5:

Organise fresh parliamentary elections that are transparent, with international observers present at all stages of the process, as soon as possible, in keeping with the implementation of Undertaking 1.3 above.

Undertaking 1.6:

Organise local elections that are transparent, with observers present at all stages of the process, within 12 months.

Undertaking 1.7:

Create the conditions necessary for democratically elected municipal assemblies to have a mandate and the resources needed to establish effective and democratically legitimate local government within 12 months.

Undertaking 2.1:

Ensure that there are no instances of extrajudicial killings, torture or other forms of inhuman or degrading treatment on Togolese soil; this includes the proper training of those managing the police and the justice system.

Undertaking 2.2:

Free all political prisoners who are clearly held for their political opposition, criticism of the government or other reasons not justifying detention. The list of prisoners concerned by this measure will be drawn up in collaboration with one or more recognised NGOs that are experienced in this field and accepted by all parties. This undertaking must be implemented within not more than six weeks.

Undertaking 2.3:

Transfer all files on persons remanded in custody or released on bail to the public prosecutor's office within three months so that their cases can be examined in accordance with the law.

Undertaking 2.4:

Give lawyers and humanitarian/human rights organisations, accompanied by a doctor of their choice, free access to detainees wherever they are held (prison, gendarmerie, police station, etc.) so that the absence of torture or other inhuman treatment can be verified before the end of the consultations.

Undertaking 2.5:

Revise the articles of association and terms of reference of the National Commission for Human Rights with a view to making it truly independent vis-à-vis the administration within nine months.

Undertaking 2.6:

Take legal or disciplinary action against the known perpetrators of extrajudicial killings, acts of torture and inhuman and degrading treatment. This undertaking also includes the amendment of relevant legislation and regulations where necessary.

Undertaking 2.7:

Take adequate measures (to be specified later) to ensure that the justice system works impartially and independently of the executive. A diagnostic study providing the basis for an action plan will be presented before the end of the consultations.

Undertaking 3.1:

Revise the press and communication code so as to align it on international standards within six months. Above all, we expect the abolition of prison terms for the offences of 'defamation and besmirching honour' currently provided for in the press code.

Undertaking 3.2:

Immediately ensure that the media, NGOs and civil society representatives do not suffer harassment, censure or intimidation.

Undertaking 3.3:

Immediately ensure that all political and civil society representatives and ordinary citizens enjoy the right to freedom of expression and peaceful assembly in all public places throughout Togolese territory without fear of harassment, censure or intimidation.

Undertaking 3.4:

Ensure the freedom of movement of all political and civil society representatives, both as citizens and in the exercise of their political or representative functions.

Undertaking 3.5:

Ensure, before the end of the consultations, that all citizens have free access to information through the media, including the websites of opposition parties, NGOs and so on.

Undertaking 3.6:

Revise the articles of association and terms of reference of the High Authority for Audiovisual and Communications within six months with a view to making it truly independent vis-à-vis the administration.

Undertaking 4.1:

Present progress reports on the dialogue and performance of undertakings to the European Union authorities on 1 June and 1 July 2004.

Undertaking 4.2:

Willingness of the Togolese authorities to take part in the dialogue on the ground and facilitate any mission of officials from the Commission and the Presidency in the framework of this dialogue.