# COUNCIL DECISION

## of 28 April 2008

## concerning the conclusion of the Agreement amending 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

(2008/373/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 310 thereof, in conjunction with the second sentence of the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament [1],

Whereas:

(1) Pursuant to 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 [2] (hereafter referred to as 'the Partnership Agreement'), a Party which, after having conducted a strengthened political dialogue, considers that another Party fails to fulfil an obligation in respect of one of the essential elements referred to in Article 9 of the Partnership Agreement may invite the other Party to hold consultations and, in certain circumstances, take appropriate measures, including where necessary the partial or full suspension of application of the Partnership Agreement to the Party concerned.

(2) Pursuant to Article 97 of the Partnership Agreement, a Party which considers that a serious case of corruption has occurred may invite the other Party to hold consultations and, in certain circumstances, take appropriate measures, including where necessary the partial or full suspension of application of the Partnership Agreement to the Party concerned.

(3) Pursuant to Article 11b of the Partnership Agreement, a Party which, after having conducted a strengthened political dialogue, informed in particular by reports by the International Atomic Energy Agency (IAEA), the Organisation for the Prohibition of Chemical Weapons (OPCW) and other relevant multilateral institutions, considers that the other Party has failed to fulfil an obligation stemming from paragraph 1 of that article on non-proliferation of weapons of mass destruction, is to invite the other party to hold consultations and, in certain circumstances, take appropriate measures, including where necessary the partial or full suspension of application of the Partnership Agreement to the party concerned.

(4) An effective procedure should be adopted when it is intended to take appropriate measures under Article 96, Article 97, or paragraphs 4, 5 and 6 of Article 11b of the Partnership Agreement.

(5) The Agreement amending 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 should be approved,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Agreement amending 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, and the declarations made by the Community unilaterally or jointly with other parties and attached to the Final Act, are hereby approved on behalf of the European Community [3].

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to deposit the instrument of approval as required by Article 93 of the Partnership Agreement on behalf of the European Community.

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[1] Assent given on 18 January 2007 (not yet published in the Official Journal).

[2] OJ L 317, 15.12.2000, p. 3. Agreement as last amended by the Agreement amending the Partnership Agreement (OJ L 209, 11.8.2005, p. 27).

[3] The texts of the Agreement and of the Final Act have already been published in OJ L 209, 11.8.2005, p. 27.

*Article 3*

1. Where, at the initiative of the Commission or a Member State, after having exhausted all possible options for dialogue under Article 8 of the Partnership Agreement, the Council considers that an ACP State fails to fulfil an obligation concerning one of the essential elements referred to in Article 9 of the Partnership Agreement, or in serious cases of corruption, the ACP State concerned shall be invited, unless there is special urgency, to hold consultations in accordance with Articles 96 and 97 of the Partnership Agreement.

Where, at the initiative of the Commission or a Member State, informed in particular by reports by the IAEA, the OPCW and other relevant multilateral institutions, the Council considers that an ACP State has failed to fulfil an obligation stemming from Article 11b(1) of the Partnership Agreement on non-proliferation of weapons of mass destruction, the ACP State concerned shall be invited, unless there is special urgency, to hold consultations in accordance with Article 11b(4), (5) and (6) of the Partnership Agreement.

The Council shall act by a qualified majority.

In the consultations, the Community shall be represented by the Presidency of the Council and the Commission.

2. If, on expiry of the deadlines for consultations provided for in Article 11b(5), Article 96(2) or Article 97(2) of the Partnership Agreement, and despite all efforts, no solution has been found, or immediately in a case of urgency or refusal to hold consultations, the Council may, pursuant to those Articles, decide, on a proposal from the Commission and acting by a qualified majority, to take appropriate measures including partial suspension.

The Council shall act unanimously in the case of a full suspension of application of the Partnership Agreement in relation to the ACP State concerned.

These measures shall remain in force until such time as the Council has used the applicable procedure as set out in the first subparagraph to take a decision amending or revoking the measures adopted previously, or where applicable, for the period indicated in the Decision.

For that purpose the Council shall proceed to review the above measures regularly and at least every six months.

The President of the Council shall notify the measures thus adopted to the ACP State concerned and to the ACP-EC Council of Ministers before they enter into force.

The Council's Decision shall be published in the *Official Journal of the European Union*. Where the measures are adopted immediately, notification thereof shall be addressed to the ACP State and to the ACP-EC Council of Ministers at the same time as an invitation to hold consultations.

3. The European Parliament shall be immediately and fully informed of any decision taken under paragraphs 1 and 2.

4. If the ACP-EC Council of Ministers develops further modalities for consultation as referred to in Article 3(5) of the Annex VII of the Partnership Agreement, the position to be taken by the Council within the ACP-EC Council of Ministers shall be based on a proposal by the Commission.

*Article 4*

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

Done at Luxembourg, 28 April 2008.

*For the Council*
*The President*
D. RUPEL