II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 24 September 2009

extending the period of application of the measures in Decision 2007/641/EC concluding consultations with the Republic of the Fiji Islands under Article 96 of the ACP-EC Partnership Agreement and Article 37 of the Development Cooperation Instrument

(2009/735/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the ACP-EC 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 [1] and revised in Luxembourg on 25 June 2005 [2], hereinafter referred to as 'the ACP-EC Partnership Agreement', and in particular Article 96 thereof,

Having regard to the Internal Agreement between 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 [3], and in particular Article 3 thereof,

Having regard to Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation [4], hereinafter referred to as 'the Development Cooperation Instrument', and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The essential elements referred to in Article 9 of the ACP-EC Partnership Agreement have been violated.

(2) The values referred to in Article 3 of the Development Cooperation Instrument have been violated.

(3) On 18 April 2007, pursuant to Article 96 of the ACP-EC Partnership Agreement and Article 37 of the Development Cooperation Instrument, formal consultations began with the ACP countries and the Republic of the Fiji Islands, during which the Fijian authorities gave specific commitments to remedy the problems identified by the European Union and to implement them.

(4) Some substantive initiatives had been taken in respect of some of the commitments referred to in recital 3. Nevertheless, not only have important commitments concerning essential elements of the ACP-EC Partnership Agreement and the Development Cooperation Instrument yet to be implemented, but there have also recently been important regressive developments concerning a number of key commitments, such as the abrogation of the Constitution and a further substantial delay in holding elections.

(5) Decision 2007/641/EC [5] expires on 1 October 2009.

[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.
[4] OJ L 378, 27.12.2006, p. 41.
[5] OJ L 260, 5.10.2007, p. 15.

(6) Therefore, it is appropriate to prolong the validity of Decision 2007/641/EC,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2007/641/EC is modified as follows:

1. in Article 3, the second paragraph is replaced by the following:

   'It shall expire on 31 March 2010. It shall be reviewed regularly at least once every six months, and without delay if new developments in the Republic of the Fiji Islands or new formal consultations with the ACP countries and the Republic of the Fiji Islands lead to specific commitments providing reasons to do so.';

2. the Annex is replaced by the Annex to this Decision.

Article 2

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

Article 3

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

Done at Brussels, 24 September 2009.

For the Council

The President

M. OLOFSSON

ANNEX

Draft letter

H.E. Ratu Epeli Nailatikau
Acting President of the Republic of the Fiji Islands
Suva
Republic of the Fiji Islands

Excellency,

The European Union attaches great importance to the provisions of Article 9 of the ACP-EC Partnership Agreement, hereinafter referred to as 'the Cotonou Agreement' and Article 3 of the Development Cooperation Instrument. The ACP-EC partnership is founded on respect for human rights, democratic principles and the rule of law, which form the essential elements of the Cotonou Agreement, and form the basis of our relations.

On 11 December 2006 the Council of the European Union condemned the military takeover in Fiji.

Under Article 96 of the Cotonou Agreement, and considering that the military takeover on 5 December 2006 constituted a violation of the essential elements listed in Article 9 of that Agreement, the European Union, hereinafter referred to as the 'EU', invited Fiji to consultations, as provided for in that Agreement, in order to thoroughly examine the situation and, where necessary, take steps to remedy it.

The formal part of those consultations began in Brussels on 18 April 2007. The EU was pleased that at the time the Interim Government confirmed a number of key commitments regarding human rights and fundamental freedoms, respect for democratic principles and the rule of law, as noted below, and proposed positive steps regarding their implementation.

Regrettably, there have since been a series of regressive developments, in particular in April 2009, meaning that Fiji is now in breach of a range of its commitments. This concerns notably the abrogation of the Constitution, the very substantial delay in holding the parliamentary elections, and human rights violations. Although implementation of the commitments has been substantially delayed, the majority of those commitments remain highly relevant to Fiji's present situation, and are therefore annexed to this letter. As Fiji has decided to break a number of key commitments, this has led to losses for Fiji in terms of development funds.

However, in the spirit of partnership forming the cornerstone of the Cotonou Agreement, the EU expresses its readiness to engage in new formal consultations as soon as there is a reasonable prospect for a positive conclusion to such consultations. The Interim Prime Minister has recently presented a roadmap for reforms and elections. The EU stands ready to engage in dialogue regarding this roadmap, and is prepared to consider whether it may serve as a basis for new consultations. Accordingly, the EU has decided to extend the existing appropriate measures for Fiji in order to create a window of opportunity for new consultations. While some of the appropriate measures are now out of date, it has been concluded that rather than update them unilaterally the EU prefers to further explore possibilities for new consultations with Fiji. Consequently, it is of particular importance that the Interim Government commits to an inclusive domestic political dialogue and to flexibility concerning the time frame for the coming roadmap. While the EU's position is and always will be guided by the essential elements of the revised Cotonou Agreement as well as its fundamental principles, notably regarding the pivotal role of dialogue and the fulfilment of mutual obligations, it is stressed that there are no foregone conclusions on the EU's side regarding the outcome of future consultations.

If new consultations result in substantial commitments from Fiji, the EU is committed to an early, positive review of these appropriate measures. Conversely, if the situation in Fiji does not improve, then further losses of development funds for Fiji are set to continue.

Until new consultations have taken place the EU invites Fiji to continue and intensify the enhanced political dialogue.

The appropriate measures are as follows:

— humanitarian aid as well as direct support to civil society may continue,

— cooperation activities under way and/or in preparation, in particular under the 8th and 9th European Development Funds, hereinafter referred to as 'EDF', may continue,

— the 9th EDF End-of-term Review may proceed,

— cooperation activities, which would help the return to democracy and improve governance, may be pursued, save under very exceptional circumstances,

— implementation of the sugar reform accompanying measures for 2006 may proceed. The financing agreement was signed at the technical level by Fiji on 19 June 2007. It is noted that the financing agreement includes a suspension clause,

— the Interim Government's acceptance on 19 June 2007 of the report of 7 June by the Pacific Islands Forum's independent election experts is in line with Commitment No 1 agreed on 18 April 2007 between the Interim Government and the EU. Consequently, the preparation and eventual signing of the multiannual indicative programme for sugar reform accompanying measures for 2008-2010 can proceed,

— the finalisation, signing at the technical level and implementation of the Country Strategy Paper and National Indicative Programme for the 10th EDF with an indicative financial envelope, as well as the possible allocation of an incentive tranche of up to 25 % of this sum, will be subject to respect of the commitments made with regard to human rights and the rule of law; notably that the Interim Government upholds the Constitution, that the independence of the judiciary is fully respected and that the Public Emergency Regulations, reintroduced on 6 September 2007, are lifted as soon as possible, that all allegations of human rights infringements are investigated or dealt with in accordance with the various procedures and forums under the laws of the Fiji Islands and that the Interim Government shall use best endeavours to prevent statements by security agencies destined to intimidate,

— the 2007 sugar allocation will be zero,

— the 2008 sugar allocation will become available, subject to evidence of credible and timely preparation of elections in accordance with the agreed commitments; notably regarding census, redrafting of boundaries and electoral reform in accordance with the Constitution, that measures will be taken to ensure the functioning of the Elections Office, including the appointment by a Supervisor of Elections by 30 September 2007 in accordance with the Constitution,

— the 2009 sugar allocation will become available subject to a legitimate government being in place,

— the 2010 allocation will depend on progress made in implementing the 2009 sugar allocation and the continuation of the democratic process,

— additional support for the preparation and implementation of key commitments, in particular in support of the preparation and/or holding of elections, could be considered over and above what is described in this letter,

— regional cooperation, and Fiji's participation in it, is unaffected,

— cooperation with the European Investment Bank and the Centre for the Development of Enterprise may continue subject to the timely fulfilment of commitments made.

Follow-up of the commitments will be in accordance with the commitments on monitoring in terms of regular dialogue, cooperation with missions and reporting, as referred to in Annex.

Furthermore, the EU expects Fiji to cooperate fully with the Pacific Islands Forum regarding the implementation of the recommendations by the Eminent Persons' Group, as endorsed by the Forum Foreign Ministers at their meeting in Vanuatu on 16 March 2007.

The European Union will continue to follow the situation in Fiji closely. Under Article 8 of the Cotonou Agreement, an enhanced political dialogue will be conducted with Fiji to ensure the respect for human rights, restoration of democracy and respect for the rule of law until both parties conclude that the enhanced nature of dialogue has served its purpose.

If there is a slowing down, breakdown or reversal in the implementation by the Interim Government of the commitments made, the EU reserves the right to adjust the appropriate measures.

The EU stresses that Fiji's privileges in its cooperation with the EU depend on respect for the essential elements of the Cotonou Agreement and for the values referred to in the Development Cooperation Instrument. In order to convince the EU that the Interim Government is fully prepared to follow-up on the commitments given, it is essential that early and substantial progress is made in the fulfilment of the agreed commitments.

Yours sincerely,

Done at Brussels,

For the Commission *For the Council*

Annex to the Annex

AGREED COMMITMENTS WITH THE REPUBLIC OF THE FIJI ISLANDS

A. **Respect for Democratic Principles**

Commitment No 1

That free and fair parliamentary elections take place within 24 months from 1 March 2007 subject to the findings of the assessment to be carried out by the independent auditors appointed by the Pacific Islands Forum Secretariat. The processes leading to and the holding of the elections shall be jointly monitored, adapted and revised as necessary on the basis of mutually agreed benchmarks. This implies in particular that:

— by 30 June 2007 the Interim Government will adopt a schedule setting out dates for the completion of the various steps to be taken in preparation for the new parliamentary elections,

— the schedule specifies the timing of census, redrafting of boundaries and electoral reform,

— determination of boundaries and electoral reform shall be carried out in accordance with the Constitution,

— measures will be taken to ensure the functioning of the Elections Office including the appointment of a Supervisor of Elections by 30 September 2007 in accordance with the Constitution,

— the appointment of the Vice-President shall be made in accordance with the Constitution.

Commitment No 2

That the Interim Government, when adopting major legislative, fiscal and other policy initiatives and changes, shall take into account consultations with civil society and other relevant stakeholders.

B. **Rule of Law**

Commitment No 1

That the Interim Government shall use best endeavours to prevent statements by security agencies destined to intimidate.

Commitment No 2

That the Interim Government upholds the 1997 Constitution and guarantees the normal and independent functioning of constitutional institutions, such as the Fiji Human Rights Commission, Public Service Commission, Constitutional Offices Commission. The substantial independence and functioning of the Great Council of Chiefs will be preserved.

Commitment No 3

That the independence of the judiciary is fully respected, that it is allowed to work freely and that its rulings are respected by all concerned parties, in particular:

— that the Interim Government undertakes that the tribunal pursuant to Section 138(3) of the Constitution be appointed by 15 July 2007,

— that any appointment and/or dismissal of judges is henceforth carried out in strict conformity with constitutional provisions and procedural rules,

— that no instances whatsoever occur, of whatever form, of interference by the military and the police or by the Interim Government with the judicial process, including full respect for the legal profession.

Commitment No 4

That all criminal proceedings linked to corruption are dealt with through the appropriate judicial channels and that any other bodies that may be set up to investigate alleged cases of corruption will operate within constitutional boundaries.

C. **Human Rights and Fundamental Freedoms**

Commitment No 1

The Interim Government will take all necessary steps to facilitate that all allegations of human rights infringements are investigated or dealt with in accordance with the various procedures and forums under the laws of the Fiji Islands.

Commitment No 2

The Interim Government intends to lift the Public Emergency Regulations in May 2007 subject to any threats to national security, public order and safety.

Commitment No 3

The Interim Government is committed to ensuring that the Fiji Human Rights Commission functions with full independence and in accordance with the Constitution.

Commitment No 4

That the freedom of expression and the freedom of the media, in all its forms are fully respected as provided in the Constitution.

D. **Follow-up of Commitments**

Commitment No 1

That the Interim Government undertakes to maintain a regular dialogue to allow verification of progress made and gives EU and EC authorities/representatives full access to information on all matters linked to human rights, the peaceful restoration of democracy and the rule of law in Fiji.

Commitment No 2

That the Interim Government cooperates fully with eventual missions from the EU and the EC for assessing and monitoring progress.

Commitment No 3

That the Interim Government sends progress reports every three months starting 30 June 2007 regarding the essential elements of the Cotonou Agreement and the commitments.

It is noted that certain issues can only be effectively addressed through a pragmatic approach which acknowledges the realities of the present and which focuses on the future.