DECISIONS

COUNCIL DECISION

of 6 June 2010

concerning the conclusion of consultations with the Republic of Madagascar under Article 96 of the ACP-EU Partnership Agreement

(2010/371/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 thereof,

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 ([1]), as revised in Luxembourg on 25 June 2005 ([2]) (hereinafter referred to as the 'ACP-EU 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 the proposal from the European Commission,

Whereas:

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

(2) On 6 July 2009, under Article 96 of the ACP-EU Partnership Agreement, consultations were opened with Madagascar in the presence of representatives of the African, Caribbean and Pacific (ACP) Group of States, during which representatives of the High Transitional Authority failed to present satisfactory proposals or undertakings.

(3) The European Union proposed that consultations remain open in order to encourage Madagascar's High Transitional Authority to continue negotiations with the country's political factions under the aegis of the joint mediation team in order to arrive at a consensual agreement.

(4) Under the aegis of the joint mediation team headed by Mr Chissano, on 9 August 2009, Madagascar's four political factions signed, in Maputo, agreements including provisions for the establishment of transition institutions to manage the transition process and organise presidential and legislative elections within fifteen months. These agreements were supplemented by the 'Additional Act to the Malagasy Charter of the Transition', which was signed in Addis Ababa on 6 November 2009.

(5) Since then, no compromise has been reached between the four political factions on the practical implementation of these agreements. The High Transitional Authority, which currently holds the reins of power, has, however, committed itself to a unilateral transition process, including the appointment of a Prime Minister and a government and the organisation of elections for 2010, which runs counter to the spirit and the letter of the Maputo agreements and the Addis Ababa Charter.

(6) Consequently, the consultations opened under Article 96 of the ACP-EU Partnership Agreement should be closed and appropriate measures adopted,

HAS ADOPTED THIS DECISION:

Article 1

Consultations with the Republic of Madagascar 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, signed in Cotonou on 23 June 2000, as revised in Luxembourg on 25 June 2005, (hereinafter referred to as the 'ACP-EU Partnership 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 ACP-EU Partnership Agreement.

([1]) OJ L 317, 15.12.2000, p. 3.
([2]) OJ L 287, 28.10.2005, p. 1.
([3]) OJ L 317, 15.12.2000, p. 376.

Article 3

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

It shall remain in force for a period of 12 months and shall be re-examined regularly.

Done at Luxembourg, 6 June 2010.

For the Council
The President
C. CORBACHO

ANNEX

Draft letter

H. E. Mr Andry Nirina RAJOELINA

President of the High Transitional Authority

of the Republic of Madagascar

Antananarivo

Madagascar

Sir,

The European Union ('EU') attaches great importance to 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 and revised in Luxembourg on 25 June 2005, hereinafter 'the ACP-EU Partnership Agreement', concerning respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership.

The EU therefore reacted immediately to the forcible transfer of power that occurred in Madagascar on 17 March 2009 and took the view that it constituted a flagrant violation of the essential elements set out in Article 9 of the ACP-EU Partnership Agreement.

Acting under Article 96 of the ACP-EU Partnership Agreement, the EU entered into a political dialogue with the ruling regime, which led to the opening of consultations with a view to assessing the situation and possible solutions for a rapid return to constitutional order. At the opening meeting of these consultations, which were held in Brussels on 6 July 2009, the EU did not consider that any satisfactory proposals had been made by the Malagasy side.

In a spirit of openness to dialogue and taking full account of the complexity of the political situation in Madagascar, the EU proposed that the consultations remain open in order to encourage Madagascar's High Transitional Authority to continue negotiations with Madagascar's political factions under the aegis of the joint mediation team made up of the African Union ('AU'), the Southern African Development Community ('SADC'), the *Organisation Internationale de la Francophonie* and the United Nations, in order to arrive at a consensus that would permit a return to constitutional order.

Under the aegis of this joint mediation team for Madagascar, and particularly after the appointment of Mr Chissano at the SADC Summit in June 2009, on 9 August 2009, the leaders of the four political factions signed, in Maputo, the Maputo Political Agreement and the Charter of the Transition, plus other agreements providing, in particular, for the creation of the institutions to manage the transition process and organise presidential and legislative elections over the next fifteen months. These agreements, which were to be implemented over the ensuing thirty days with appointments to key posts in the transition institutions made by consensus, have been supplemented by the Additional Act to the Malagasy Charter of the Transition, which was signed by the leaders of the four political factions on 6 November 2009 in Addis Ababa.

Despite the many efforts of the joint mediation team with the support of the international community over the last few months, and despite the most recent ad hoc initiative of the President of the AU Commission, the political factions have not been able to reach agreement on the implementation of the transition process to which they agreed in Maputo and in Addis Ababa. Rather, Mr Rajoelina has embarked upon a unilateral transition process, including the appointment of a Prime Minister and a government and the organisation of elections for 2010, which runs counter to both the spirit and the letter of the Maputo Agreements and the Addis Ababa Charter.

In light of the foregoing, the EU has decided to close the consultation period and has decided under Article 96(2)(c) of the ACP-EU Partnership Agreement to adopt the appropriate measures described below:

— Humanitarian and emergency aid is not affected.

— Budgetary aid provided for in the National Indicative Programmes ('NIP') of the 9th European Development Fund ('EDF') and 10th EDF shall be suspended.

— Projects and programmes already under way under the 9th EDF shall continue to be implemented except for activities and payments directly involving the government and its agencies. Modifications and addenda to current contracts shall be examined on a case-by-case basis. New contracts shall be suspended.

— The implementation of the NIP – 10th EDF shall be suspended.

— The European Commission may implement certain projects and programmes that directly benefit the population,

— Regional projects shall be evaluated on a case-by-case basis.

— The European Commission reserves the right to assume immediately, wholly or partially, the functions of National Authorising Officer for the EDF.

— The political dialogue provided for in Article 8 of the ACP-EU Partnership Agreement shall be maintained and conducted, as far as possible, in coordination with the International Contact Group on Madagascar. It may be stepped up if a consensus-based solution for a return to constitutional order is reached, which includes 1) a consensual arrangement for a transitional government; 2) the setting-up of a clear roadmap towards election, which is acceptable to the involved parties and which allows for a free and fair election campaign; 3) fair elections, recognised as such by the international community and which can provide democratic legitimacy to a new Government. The EU will continue to monitor closely developments in Madagascar and may give its support to, if applicable, the implementation of a consensual political solution to the crisis.

These appropriate measures shall be adopted for an initial period of twelve months.

The EU reserves the right to examine and revise the measures mentioned above in order to take into consideration any developments, positive or negative, in the situation in Madagascar.

We wish to assure you, Mr President, of our highest consideration.

For the European Union

The Commission

J.M. BARROSO

The Council

C. CORBACHO