

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.1.2004
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Proposal for a

COUNCIL DECISION

extending the period of application of the measures in Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On 18 February 2002, the Council of the European Union decided to take "appropriate measures" against Zimbabwe[1] following the conclusion of the consultations held under Article 96 of the ACP-EC Partnership Agreement[2]. These measures included the suspension of financing of budgetary support and support for projects, as well as the suspension of the signature of the 9th EDF National Indicative Programme, but explicitly did not affect the contributions to operations of a humanitarian nature and projects in direct support to the population, in particular those in social sectors, democratisation, respect for human rights and the rule of law. They also included the suspension of Article 12 of Annex 2 to the ACP-EU Partnership Agreement, concerning current payments and capital movements, in so far as required for the application of further restrictive measures, and in particular the freezing of funds.

2. The stated reason for introducing these measures was the serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly. A more immediate reason was the attempts by the Zimbabwean government to prevent free and fair elections, notably by refusing access for international election observers and for the media.

3. According to Article 2 (3) of the Decision of 18 February 2002, the measures shall apply for a period of twelve months. According to the same provision, the measures will be revoked once conditions prevail which ensure respect for human rights, democratic principles and the rule of law.

4. On 18 February 2003[3], the Council, taking into account that the essential elements cited in Article 9 of the ACP-EC Partnership Agreement continued to be violated by the Government of Zimbabwe and that the conditions in this country did not ensure respect for human rights, democratic principles and the rule of law, decided to extend for an additional period of 12 months until 20 February 2004, the appropriate measures against Zimbabwe.

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1 Cf. Council Decision 2002/148/EC (OJCE L 50/64 of 21.02.2002. Furthermore (see GAC Conclusions of 18 February 2002) the Council adopted as well targeted CFSP sanctions (Council Common Position 2002/145/CFSP and Council Regulation (EC) N°310/2002 concerning certain restrictive measures in respect of Zimbabwe; OJCE L 50/1-12).

2 Art. 96 consultations were open with a view to agreeing on measures to be taken by the Government of Zimbabwe to remedy the situation, in particular on five issues (end to all official tolerance to political violence; early invitation to international partners to support and observe coming elections and full access to that end; protection of the freedom of mass media; independence of the judiciary and the respect for its decisions and end to illegal occupation of properties).

3 Cf. OJEU, L46 of 20.02.2003.

5. Since February 2003 there has no been any progress on the five issues earmarked by the Article 96 consultations. On the contrary, the current situation in Zimbabwe continues being a matter of great concern. During this last year, several reports from the Heads of Missions[4] in Harare have provided detailed information on the deterioration of the situation.

6. Due to the fact that there are no commitments from the Government of Zimbabwe to take tangible measures to remedy the situation in the five main areas of concern, any lifting or even easing of the appropriate measures does not seem justified. Expanding them should also be excluded in order to avoid a likely negative impact on the Zimbabwean population.

7. For this reason, the Commission considers that the decision should be extended for a further period of 12 months from the 20 February 2004. Given that the proposed decision concerns only an extension of the existing appropriate measures without any modifications, it is not necessary to reopen consultations with Zimbabwe under Art. 96 of the ACP-EU Partnership Agreement.

8. The decision is to be kept under constant review and the measures should be revoked once conditions prevail which ensure respect for human rights, democratic principles and the rule of law. Moreover, the European Union should reserve the right to take additional measures.

Conclusion

9. In the light of the above, the Commission proposes to the Council to adopt the attached decision.

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[4] Cf. HOMS report of 03.02.2003 on human rights situation in Zimbabwe; HOMS report of 06.02.2003 on 06.02.2003 on the situation in Zimbabwe; HOMS report of 02.05.2003 on torture in Zimbabwe; HOMS report of 09.05.2003 on benchmarks for dialogue with Zimbabwe; HOMS update report of 15.05.2003 on human rights in Zimbabwe; HOMS report of 02.09.2003 on food distribution in Zimbabwe; HOMS report of 30.10.2003 on Daily News issue.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2), second subparagraph thereof,

Having regard to the Internal Agreement[5] on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, as put into provisional application by Decision of the Representatives of the Governments of the Member States of 18 September 2000, and, in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) By Council Decision 2002/148/EC[6], the consultations with the Republic of Zimbabwe under Article 96(2)(c) of the ACP-EC Partnership Agreement were closed and appropriate measures, as specified in the Annex to that decision were taken.

(2) By Council Decision 2003/112/EC[7], the application of the measures referred to in Article 2 of Council Decision 2002/148/EC has been extended for a further period of 12 months. In accordance with its Article 1, the measures would cease to apply on 20 February 2004.

(3) The essential elements cited in Article 9 of the ACP-EC Partnership Agreement continue to be violated by the Government of Zimbabwe and the current conditions in Zimbabwe do not ensure respect for human rights, democratic principles and the rule of law.

(4) The period of application of the measures should therefore be extended.

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5 OJ L 317, 15.12.2000, p. 376.
6 OJ L 50, 21.2.2002, p. 64.
7 OJ L 46, 20.2.2003, p. 25.

HAS DECIDED AS FOLLOWS:

Article 1

The application of the measures referred to in Article 2 of Decision 2002/148/EC, which were extended until 20 February 2004 by Council Decision 2003/112/EC, shall be extended for a further period of 12 months, until 20 February 2005. They shall be reviewed regularly and at least within six months.

The letter appearing in the Annex to this Decision shall be addressed to the President of Zimbabwe.

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union.*

Done at Brussels, […]

For the Council
The President

ANNEX

Brussels, […]

LETTER TO THE PRESIDENT OF ZIMBABWE

The European Union attaches the utmost importance to the provisions of Article 9 of the ACP-EC Partnership Agreement. As essential elements of the Partnership Agreement, respect for human rights, democratic institutions and the rule of law are the basis of our relations.

By letter of 19 February 2002, the European Union informed you of its decision to conclude the consultations held under Article 96 of the ACP-EC Partnership Agreement and to take certain 'appropriate measures' within the meaning of Article 96(2)(c) of that Agreement.

By letter of 19 February 2003, the European Union informed you of its decision not to revoke the application of the 'appropriate measures'.

Today, after a further 12-month period, the European Union considers that democratic principles are still not upheld in Zimbabwe and that no progress has been achieved by the Government of Zimbabwe in the five fields addressed by the 18 February 2002 Council Decision (end of politically motivated violence, free and fair elections, freedom of the media, independence of the judiciary, end of illegal farm occupations).

In the light of the above, the European Union does not consider that the appropriate measures can be revoked.

The measures will only be revoked once conditions prevail which ensure respect for human rights, democratic principles and the rule of law. The European Union reserves the right to take additional restrictive measures.

The European Union will closely follow developments in Zimbabwe and would once again like to emphasise that it does not wish to penalise the Zimbabwean people and will continue with its contribution to operations of a humanitarian nature and projects in direct support of the population, in particular those in social sectors, democratisation, respect for human rights and the rule of law, which are not affected by these measures.

The European Union desires to pursue the dialogue with Zimbabwe, on the basis of the ACP-EC Partnership Agreement, and hopes that you will do everything you can to restore respect for the essential principles of the Partnership Agreement and to put the country on the path of social peace and economic recovery. This would permit the lifting of the suspension of the signing of the 9th EDF National Indicative Programme for Zimbabwe, thereby making possible the resumption of full co-operation instruments in the near future.

Yours faithfully,

For the Commission *For the Council*