



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.02.1996
COM(96) 69 final

96/050 (AVC)

Proposal for a

COUNCIL DECISION

**on a framework procedure for implementing
Article 366a of the Fourth Lomé Convention**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Community's development cooperation policy is geared to furthering the goal of developing and consolidating democracy and the rule of law, and respecting human rights and fundamental freedoms. Upholding human rights, democratic principles and the rule of law constitutes, pursuant to Article 5 of the Agreement signed in Mauritius on 4 November 1995, one of the essential elements of the Fourth Lomé Convention.

Under Article 366a of the Convention, a Party which considers that there has been a failure to fulfil an obligation in respect of one of the essential elements referred to in Article 5 may invite the other Party concerned to hold consultations to assess the situation in detail and, where appropriate, remedy it. To that end, Article 366a provides for a special procedure, including set deadlines for those consultations.

On expiry of the deadlines, if in spite of all the efforts made no solution has been found, or immediately in the event of urgency or refusal to hold consultations, the Party which invoked failure may take appropriate steps including, where necessary, the partial or full suspension of the application of the Convention to the Party concerned, it being understood that suspension would be a last resort.

Article 366a also provides for any measure to be notified in advance to the Party concerned and for the measure to be revoked as soon as the reasons for taking it no longer exist.

Within the meaning of Article 366a of the Convention, the term "Party" refers to the Community and the Member States of the European Union, on the one hand, and each ACP State on the other. In fields covered by the Convention and falling within their jurisdiction, Member States may adopt in parallel a decision authorizing the Council, if need be, also to cover these fields when adopting decisions pursuant to Articles 1 and 2 of this Decision. This Decision should take the form of an amendment to the internal agreement on the measures to be taken and the procedures to be followed for the application of the Fourth Lomé Convention adopted in 1991 by the representatives of the Governments of the Member States meeting within the Council.

A draft Decision containing this amendment is forwarded by the Commission to the Council along with this proposal.

PROPOSAL FOR A COUNCIL DECISION

on the procedure for implementing Article 366a of the Fourth Lomé Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 238 thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament,

Whereas Community development cooperation policy contributes, in accordance with Article 130u of the Treaty establishing the European Community, to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms;

Whereas Article 5 of the Agreement signed in Mauritius on 4 November 1995 amending the Fourth ACP-EC Convention signed in Lomé on 15 December 1989 (hereinafter referred to as "the Convention") stipulates that respect for human rights, democratic principles and the rule of law are essential elements of the Convention;

Whereas pursuant to Article 366a of the Convention the Party which considers that another Party has failed to fulfil an obligation in respect of one of the essential elements referred to in Article 5 may invite the other Party to hold consultations and, in certain circumstances, take appropriate steps, including, where necessary, the partial or full suspension of application of the Convention to the Party concerned;

Whereas an effective procedure should be adopted when it is intended to take appropriate measures;

Whereas pursuant to Article 366a of the Convention the term "Party" means the Community and the EU Member States, of the one part, and each ACP State, of the other part;

Whereas in fields covered by the Convention and falling within their jurisdiction, Member States may adopt in parallel a decision authorizing the Council, if need be, also to cover these fields in adopting decisions pursuant to Articles 1 and 2 of this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

Where, at the initiative of the Commission or a Member State, the Council considers that an ACP State has failed to fulfil an obligation concerning one of the essential elements referred to in Article 5 of the Lomé Convention, the ACP State concerned shall be invited, except in cases of special urgency, to hold consultations in accordance with Article 366a(1) of the Convention. The Council shall act by a qualified majority.

Article 2

If, on expiry of the deadline set in Article 366a for the consultations and despite all efforts, no solution has been found - either immediately in a case of urgency or refusal to hold consultations - the Council may, pursuant to that same Article, decide, on a proposal from the Commission, to take appropriate steps acting by a qualified majority.

The Council's Decision shall enter into force on the day of its publication. The Decision and any amendment thereto shall be communicated forthwith to the European Parliament.

The President of the Council shall notify the measures thus adopted to the ACP State concerned before they enter into force. Where these measures are adopted immediately, notification thereof shall be addressed to the ACP State at the same time as an invitation to hold consultations.

Article 3

This Decision shall take effect on the day following that of its adoption.

Done at, 1996.

For the Council,
The President

**Draft amendment to the Internal Agreement
on the measures to be taken and the procedures to be followed
in applying the Fourth ACP-EC Convention (91/402/EEC)**

THE REPRESENTATIVES OF THE GOVERNMENTS OF MEMBER STATES OF
THE EUROPEAN COMMUNITY, MEETING WITHIN THE COUNCIL,

Having regard to the Treaty establishing the European Community, hereinafter referred to as the "Treaty" and to the Fourth ACP-EC Convention signed in Lomé on 15 December 1989 and amended by the Agreement signed in Mauritius on 4 November 1995, hereinafter referred to as the "Convention",

Having regard to the internal agreement on the measures to be taken and the procedures to be followed in applying the Fourth ACP-EC Convention, and in particular Article 7 thereof,

Whereas under Article 5 of the Convention, respect for human rights, democratic principles and the rule of law constitute essential elements of the Convention,

Whereas Article 366a of the Convention provides that a Party which considers that there has been a failure to fulfil an obligation concerning one of the essential elements referred to in Article 5 may invite the other Party concerned to hold consultations and, in certain circumstances, take appropriate steps, including, where necessary, but only as a last resort, the partial or full suspension of the application of the Convention to the Party concerned;

Whereas an effective procedure should be adopted where it is intended to take appropriate steps;

Whereas within the meaning of Article 366a of the Convention the term "Party" shall mean the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part;

Whereas it is therefore necessary, in fields covered by the Convention and falling within their jurisdiction, that Member States authorize the Council to adopt appropriate decisions pursuant to Article 366a of the Convention,

After consulting the Commission,

HAVE AGREED AS FOLLOWS:

Article 2a shall be added to Article 2 of the internal agreement referred to above:

In adopting decisions relating to Article 366a of the Convention, pursuant to Decision (= EC decision-making procedure), the Council shall be authorized, in fields covered by the Convention and falling within the jurisdiction of the Member States, to cover those same fields.

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