



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**concerning the opening of consultations with the Togolese Republic
under Article 96 of the Cotonou Agreement**

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Article 9(2) of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, to which the Togolese Republic is a signatory, defines the essential elements on which the partnership is based. Respect for human rights, democratic principles and the rule of law are the essential principles on which internal and international policies are founded.

Following consultations under Article 366a of the revised Lomé Convention, initiated after the counting of ballots in the presidential election of 21 June 1998 was halted, the European Union decided not to resume cooperation - which had been suspended since October 1992 - because the Togolese authorities had not taken the necessary steps to remedy the problems observed during the election. The decision did, however, stipulate that the European Union would as far as possible avoid penalising civil society in Togo and would help to promote compliance with the essential elements of the Lomé Convention.

In July 1999, following a boycott of the legislative elections by the traditional opposition, the EU appealed to the authorities to enter into a new dialogue with the opposition and undertook to provide backing for this internal dialogue. The dialogue was formally embodied in the Lomé Framework Agreement (ACL) and initially achieved some successes such as a new electoral code, the setting up of an Independent National Electoral Commission (CENI), an undertaking by the President of the Republic not to stand in the 2003 presidential election and another to bring forward the legislative elections to 2000. The EU then made the holding of democratic elections and respect for human rights the conditions for resumption of cooperation with Togo.

However, full and effective implementation of the ACL, particularly the bringing forward of the legislative elections, was undermined by the Government which unilaterally amended the electoral code and the composition of the CENI. The traditional opposition then boycotted the legislative elections of 30 October 2002 because they were held on the basis of an electoral framework which it did not recognise. The EU's démarches and declarations and calls by the international community for the Government to adhere to the ACL had no positive effect so that the Union declared that the manner of holding the elections did not promote a national democratic process. After the presidential election of 1 June 2003 the Union expressed serious concern about incidents that had occurred before, during and after the election. The arrest and detention of activist members of the opposition and the intimidation of the private press gave further cause for concern.

The political conditions subject to which cooperation with Togo could have been resumed have therefore not been fulfilled and no longer apply. As a result, Togo has not received an allocation from the eighth EDF or notification of an amount under the ninth EDF. Currently, two cooperation projects to be financed from the outstanding balances of the sixth and seventh EDFs (support for the fourth population census; support for

decentralised management of the environment) are still awaiting signature pending progress in the main fields preoccupying the Union.

Aware of the impasse in the dialogue with both the EU and the traditional opposition, the Togolese authorities have expressed the wish to resume dialogue with the European Union. When they met on 2 October 2003 the Togolese Prime Minister, Mr Koffi Sama, asked Commission President Prodi if he would not consider opening consultations under Article 96 of the Cotonou Agreement. The Prime Minister stated that the Government would seek to strengthen democracy and that he was prepared to work on democracy and human rights and to apply acceptable solutions. He requested strong support from the EU as backing for the process.

The Commission would like to seize this opening to resume the dialogue and, like the Togolese authorities themselves, considers the most appropriate legal instrument to be that of consultations under Article 96 of the Cotonou Agreement. Consequently the Commission proposes to the Member States that consultations should begin with the Togolese Republic to ascertain the latter's intentions with regard to engaging in genuine dialogue with the opposition parties and representatives of civil society and allowing initiation of a true democratic process at all levels of society. In line with the ACL, the objective of this dialogue should be the full reinstatement of democracy and respect for human rights and fundamental freedoms, including freedom of the media. The consultations should also make it possible to set new political targets for Togo to achieve in this process.

The consultations will also help decide whether the Decision of 14 December 1998 not to resume cooperation should remain in force or whether new, appropriate measures should be taken under Article 96 of the Cotonou Agreement.

The Commission therefore proposes that the Council invite the Togolese Republic for consultations under Articles 9 and 96 of the Cotonou Agreement, in accordance with the draft letter attached.

While the consultations are under way, the Council Decision of 14 December 1998 not to resume cooperation with Togo will remain in force although, as stipulated in the Decision, every effort will be made not to penalise civil society.

ANNEX

Brussels,
H.E. Mr Koffi Sam
Prime Minister of the Togolese Republic
Lomé
Togo

DRAFT

Your Excellency,

During your meeting on 2 October with Mr Prodi, President of the European Commission, you expressed the Togolese Government's wish to resume the dialogue with the European Union, in the form of consultations under Article 96 of the Cotonou Agreement, in order to discuss the process of democratisation and the human rights situation in Togo.

The European Union shares your view that the dialogue begun in July 1999 between the Union and Togo did not achieve the desired results and that the situation needs to be reviewed jointly to determine how the current political impasse can be resolved. The Union considers that formal dialogue under Article 96 is the appropriate format.

Consequently, in accordance with Article 96 of the Cotonou Agreement, we have the honour, on behalf of the Community and the Member States of the European Union, to invite your country for consultations in order, as provided for in the Agreement, to study the situation in depth and, where necessary, take steps to remedy it.

The European Union wishes in particular to know what the Togolese Republic intends to do to initiate a genuine dialogue with the various opposition parties and representatives of civil society so that a true democratic process can begin with a view to full restoration of democracy at all levels of society. The European Union also wishes to discuss the situation as regards human rights and fundamental freedoms, including freedom of the media, in your country in order to ascertain what the Togolese Government has done to improve the situation.

We propose that these consultations take place in the near future, at a date to be agreed jointly, in the building of the Council of the European Union in Brussels.

We have the honour to be, Sir, yours faithfully,

For the Council

For the Commission

Copies: Chairman of the ACP Committee of Ambassadors
Secretary-General of the ACP Group